TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1912.

No. 621.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

UNION STOCK YARD & TRANSIT COMPANY OF CHICAGO ET AL.

No. 622.

THE CHICAGO JUNCTION RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF THE ATTORNEY GENERAL, AT THE REQUEST OF THE INTERSTATE COMMERCE COMMISSION.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED APRIL 22, 1913.

(23173 AND 23174.)

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a United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, petitioners,
vs.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, respondents. } No. 15.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Circuit Court for the Northern District of Illinois, Eastern Division, and in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit: Bill of complaint (filed June 13, 1910).

1 In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

THE UNITED STATES OF AMERICA, UPON THE application of the Attorney General, at the request of the Interstate Commerce Commission, complainants,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. } In equity. 30041.

Bill of complaint.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois:

Your petitioner, the United States of America, upon the application of the Attorney General, made at the request of the Interstate Commerce Commission, brings this bill against the Union Stock
2 Yard and Transit Company of Chicago, a corporation; the Chicago Junction Railway Company, a corporation; the Chi-

cago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, copartners doing business under the firm name and style of Louis Pfaelzer & Sons, and thereupon your petitioner complains and says:

I.

That your petitioner alleges that the Interstate Commerce Commission was created, established, and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof and supplementary thereto, under and by virtue of which said acts of Congress said Interstate Commerce Commission is duly authorized and empowered by the provisions thereof, and it is its duty thereunder, to execute and enforce the provisions of said acts in accordance with the terms thereof.

II.

That the defendant Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Company") is a corporation organized under and by virtue of a special act of the Legislature of the State of Illinois, approved February 13, 1865, a copy of which said act is hereto attached, marked "Exhibit A," and made a part hereof; that the said defendant Stock Yard Company has its principal place of business and principal operating office in the city of Chicago and within the Northern District of the State of
3 Illinois; that at the present time its has issued and outstanding 132,000 shares of stock of the par value of $100 each and bonds and notes of the par value of $500,000.

III.

That the said defendant, the Chicago Junction Railway Company (hereinafter called the "Junction Company"), is a corporation organized and existing under the general railroad act of the State of Illinois, with its principal place of business and principal operating office in the city of Chicago, within the Northern District of the State of Illinois; that said Junction Company has issued and outstanding 22,000 shares of stock of the par value of $100 each.

IV.

That the defendant, the Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "Investment Company"), is a corporation organized and existing under the laws of the State of New Jersey as an investment company, with its principal place of business in the city of New York, in the State of New York;

that a copy of the charter of said Investment Company is hereto attached, marked "Exhibit B," and made a part hereof; that at the present time said Investment Company has issued and outstanding 130,000 shares of stock of the par value of $100 each, together with various issues of bonds.

V.

That the defendants, David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, are citizens of the State of Illinois, residing in the
4 city of Chicago, and constitute a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, with their principal place of business and principal operating office in the city of Chicago, and within the Northern District of the State of Illinois.

VI.

That this suit arises under the laws of the United States, as will hereinafter appear, and especially under an act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and under "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903, and as amended by an act of Congress approved June 29, 1906; and that this suit is brought upon the application of the Attorney General at the express request of the Interstate Commerce Commission, in accordance with the provisions of said acts in this paragraph referred to.

VII.

That under and by virtue of a special act of the Legislature of the State of Illinois, approved February 13, 1865, and hereinbefore referred to as "Exhibit A," the defendant Stock Yard Company was organized and created for the purpose of constructing, maintaining, and operating stock yards in the city of Chicago, for the receipt and handling of live stock as well as dead freight moving thereto by railroad, or by rail and water, whether said live stock and dead freight originated at points wholly within the State of Illinois or whether same originated at points outside the State of Illinois,
5 and in addition thereto was obligated and given power and authority to construct, operate, and maintain, and if necessary to condemn property therefor, lines of railway connecting said stock yards with all of the railroads entering the city of Chicago, engaged in the transportation of property from points without the State of Illinois to Chicago, Ill., or from points wholly within the State of Illinois to Chicago; that for definiteness and certainty as to the nature of the organization of the Stock Yard Company and the powers conferred and duties imposed by the act of the Illinois Legislature hereinbefore referred to, special reference is hereby made to "Exhibit A."

That immediately after the passage of the act of the Legislature of Illinois approved February 13, 1865, the Stock Yard Company proceeded to purchase and acquire, and from time to time purchased and acquired, real estate located west of Halstead Street and south of Thirty-ninth Street, in the city of Chicago, and constructed thereon its certain stock yards, from which time it has continuously operated said stock yards, and is now engaged in the operation thereof; that in the locality above referred to said defendant has about 550 acres of land devoted to stock-yard purposes, and it owns and uses in the immediate vicinity for its other corporate purposes about 250 additional acres of land.

After the passage of the act of the Illinois Legislature aforesaid, the Stock Yard Company also built, in the neighborhood of its stock yards, for the accommodation of its patrons, its certain hotel and proceeded to operate same, and has continuously from that
6 time to the present and is now operating such hotel; that the construction and operation of such hotel was expressly authorized by the charter of the Stock Yard Company.

That in carrying out the provisions of its charter, the Stock Yard Company also constructed railroad tracks authorized thereby, for use in connection with its stock yards and as incidental to its effective operation, and for a long period of time operated its trains and cars over said tracks; that it also constructed adjacent to such railroad tracks, and for use in connection therewith, loading docks, chutes, or platforms suitable for the loading and unloading of cattle, sheep, hogs, and live stock, which said loading docks, chutes, or platforms were constructed in places convenient and accessible to the pens used, operated, and constructed by it in connection with its business as a stock yard; that attached hereto and made a part hereof is a blueprint marked "Exhibit C," which shows the location of the tracks referred to as having been constructed, operated, and maintained by said Stock Yard Company; said tracks intersect or connect with substantially all the tracks of every interstate carrier by railroad (hereinafter called "trunk line carriers") entering the city of Chicago, and by means of said tracks, freight (whether consisting of live stock or dead freight) coming to the stock yards or industries located in that immediate vicinity can and does move in an unbroken line of rail carriage from points outside the State of Illinois to the stock yards and industries located at such stock yards and on the lines of railroad owned by said Stock Yard Company; that along the lines of railroad set forth in "Exhibit C" there have been located private indus-
7 tries that receive and ship out freight over the lines of railroad hereinbefore referred to, originating at, or destined to, points beyond the State of Illinois; that freight originating in the stock yards and points adjacent thereto and from the private industries hereinbefore referred to, and in the immediate vicinity thereof, may be, and is, moved in unbroken carriage over said railroad tracks of the Stock Yard Company in large quantities on through bills of lading from its point of origin on the lines of said Stock Yard Com-

pany to its point of destination beyond the State of Illinois in connection with the trunk line carrier or carriers, by railroad (or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment) that reach such final destination: that the method of moving such incoming and outbound freight is hereinafter more specifically set forth.

That live stock which is brought into the stock yards by trunk-line carriers from points either wholly within or from points outside the State of Illinois, as will be hereinafter set forth, is delivered at said loading docks, chutes, or platforms, where it is unloaded by employees of the Stock Yard Company, and for this unloading service the Stock Yard Company is paid by the respective trunk-line carriers carrying the freight a fixed sum per car for all the cars unloaded; that the specific sums paid by the trunk-line carriers to the Stock Yard Company for this unloading service is not published or filed with the Interstate Commerce Commission in any tariff issued by the Stock Yard Company, or in any tariff to which it is a party by proper concurrence, nor is said charge published or
8 filed with the Interstate Commerce Commission by any trunk-line carrier in any tariff issued by it, or in which it has lawfully concurred, as provided in section 6 of the act to regulate commerce.

When live stock is outbound from the stock yards destined to points outside the State of Illinois, the Stock Yard Company loads such stock through and over its loading docks, chutes, or platforms into cars alongside thereof, as will be hereinafter set forth, and for this service of loading such cars the respective trunk-line carriers carrying such freight pay the Stock Yard Company a fixed sum per car for each car loaded; that the specific charge made by the Stock Yard Company for the loading of said stock as aforesaid, and paid by the trunk-line carrier or carriers as aforesaid, is not published or filed with the Interstate Commerce Commission in any tariff of the Stock Yard Company or in which it has lawfully concurred, nor is said charge published or filed with the Interstate Commerce Commission in any tariff issued by any trunk-line carrier or in which it has lawfully concurred.

The stock so unloaded as aforesaid by the Stock Yard Company is mostly stock consigned on through bills of lading from points beyond the State of Illinois to consignees doing business in and around the stock yards and said stock-yard district in the city of Chicago and adjacent thereto, which has been transported by railroad from points of origin outside the State of Illinois to the stock yards or to points on the lines of railroad owned by the Stock Yard Company in connection with said trunk-line carriers. The stock so loaded by the Stock Yard Company, as hereinbefore alleged, is gen-
9 erally consigned from owners or dealers therein doing business in and around the stock-yards district, and whose places of business or industries are located on the railroad tracks of said

Stock Yard Company and said stock moves therefrom on through bills of lading and by railroad over the lines of railway of said Stock Yard Company in connection with the trunk-line interstate carriers by railroad reaching the points of destination, to points beyond the State of Illinois; that the Stock Yard Company also loads and unloads live stock consigned to or shipped by industries located along the right of way of its said railroad tracks, for which the trunk-line carriers handling the shipment pay the Stock Yard Company a fixed sum per car; that the charge made by the Stock Yard Company for such service, and paid thereto by the trunk-line carriers, is not published and filed with the Interstate Commerce Commission in any tariff of the Stock Yard Company filed with said commission, nor is said charge published and filed with the Interstate Commerce Commission in any tariff issued by any trunk-line carrier, or in which it has lawfully concurred.

The Stock Yard Company is not itself a dealer in cattle or live stock, but keeps and maintains a public market, where all kinds of live stock are bought and sold by others. As a part of its stock-yard business it frequently feeds and waters stock in transit over the lines of the trunk-line carriers, and for this service it charges compensation, which is paid by the carrier or carriers handling the freight from and to said stock yards. This charge exacted by the Stock Yard Company for the said service is not published or filed with the Interstate Commerce Commission in any tariff issued by said Stock Yard Company or in which it has concurred, nor is said charge published or filed with the Interstate Commerce Commission by any trunk-line carrier in any tariff lawfully on file with said commission. The Stock Yard Company also frequently constructs, at the request of the carriers owning or controlling equipment, partitions in cattle cars for the purpose of separating various classes of cattle in a car, and for its service in doing such work it is paid by the carrier which engages it to perform the service. The charges so exacted by the Stock Yard Company for this service are not published or filed with the Interstate Commerce Commission in any tariff on file with said commission. The Stock Yard Company, as a part of its business, feeds, beds, and waters live stock shipped to consignees thereof doing business at or near the stock yards, and for this service it makes a charge and receives payment therefor from the commission men engaged in the business of buying and selling cattle at the yards. The charge for this service is not published or filed with the Interstate Commerce Commission in any tariff filed with the commission.

On December 5, 1897, the Stock Yard Company, pursuant to the powers conferred upon it by its charter, duly entered into, executed, and delivered a certain written instrument by which it delivered all its said railroad to a corporation known as the Chicago & Indiana State Line Railway Company (hereinafter designated as the "State Line Company"). A copy of said written instrument is hereto attached, marked "Exhibit D," and made a part hereof. Under

the terms of said written instrument the Stock Yard Company delivered to the State Line Company all its said tracks and lines of railroad shown in Exhibit C, but it did not deliver its
11 loading docks, chutes, or platforms, or other loading and unloading facilities appurtenant to its stock yard, and it retained the control of said facilities, and has always continued and still continues to use the same, as hereinafter set forth.

VIII.

That said State Line Company was a corporation organized under and by virtue of the general railroad act of the State of Illinois, and after the execution of said written instrument of December 15, 1897, as hereinbefore set forth, said State Line Company, in accordance with the powers conferred upon it by the statutes of the State of Illinois, consolidated with another certain railroad company organized and existing under the laws of the State of Illinois, known as the Chicago, Hammond & Western Railroad Company, and in the consolidation agreement it was provided that the name of the said consolidated company should be "The Chicago Junction Railway Company," being the name of the company herein designated as the Junction Company. Said Junction Company at the time of said consolidation owned and operated, in addition to the tracks operated under the written instrument to the State Line Company above referred to, a belt-line railroad running around the city of Chicago from a point called Franklin Park, northwest of the city of Chicago, in and to the city of Hammond, Ind., and thence to Whiting, Ind.

On November 1, 1907, the Junction Company duly sold to the East Chicago Belt Railroad Company, a corporation of the State of Indiana, all that portion of its railroad running from Franklin Park, on the northwest, to Hammond and Whiting, Ind., as
12 aforesaid, and divested itself of each and every part and all of said belt railroad, as aforesaid, and discontinued the operation thereof, retaining only the railroad tracks originally owned and constructed by the Stock Yard Company, and by the latter delivered to said State Line Company; that said Junction Company does not now own or operate any tracks or railroads except those operated by it under the written instrument aforesaid, which tracks are shown on said blue print, marked "Exhibit C," and which are wholly located within the county of Cook, in the State of Illinois; that the tracks and lines of railroad now operated by the Junction Company under the written instrument hereinbefore referred to, including the right of way thereof, are owned solely and wholly by the Stock Yard Company.

The line of railroad now operated by said Junction Company consists of main tracks running east and west from a point on the lake front, in the city of Chicago, near the intersection of Thirty-ninth Street and the tracks of the Illinois Central Railroad Company and

the lake; running thence in a general westerly direction and northwest to another point in Illinois, being in all about 8¼ miles west of said lake front; that said stock yards are located about 2 miles west of said lake front; that said Junction Company operates a large number of parallel main tracks running between the points aforesaid, the total aggregate length of which is about 40 miles; it also operates switch tracks to industries located at or near the stock yards, in the city of Chicago, aggregating in all about 250 miles of single track; that over the main and switch tracks so operated by it it serves in the neighborhood of 650 industries, all of which are situated in the State of Illinois and located at or near what is
13 known as the stock-yards district of Chicago, in the State of Illinois; that all the railroad tracks operated by said Junction Company are owned solely by the Stock Yard Company.

The method of operating all said tracks by the Junction Company is as follows:

(a) Through trains of interstate freight hauled by the motive power of trunk-line carriers frequently use these tracks in order to connect the tracks of western trunk lines with those of eastern trunk lines. While on the tracks of the Junction Company said trains are subject to the control of train dispatchers of the Junction Company. The semaphores constructed on the tracks operated by the Junction Company are operated by employees of the Junction Company while its tracks are being used by the trains of said trunk-line carriers by railroad.

(b) Every day during the year large numbers of cars loaded with dead freight in carload lots are brought into the State of Illinois by trunk-line carriers by railroad from points outside the State of Illinois, destined generally to points inside the district served by the Junction Company and to points on the lines of railroad operated by it, but sometimes such freight is destined to points outside the State of Illinois. These cars are placed by said respective trunk-line railroads on what are known as the receiving tracks of the Junction Company, and each of said cars is, by the trunk-line railroad handling the same, marked with a transfer card showing the name of the consignee and thus indicating the point or destination to which the same is to be transported by the Junction Company, and the Junction Company, without an order from or any arrange-
14 ment made with the consignee or any other person, picks up each car and with its own motive power carries it from such receiving tracks to the industry or consignee designated in the transfer card placed on the car by the trunk-line railroad that delivered the same to the receiving tracks of the Junction Company; that in the event that such car of freight is destined to a point beyond the State of Illinois, the Junction Company picks up such car of freight on its receiving tracks and transports same to the outgoing trunk-line railroad designated in the transfer card placed on the car by the incoming trunk-line railroad, and such freight is thus handled from point of origin outside the State of Illinois to Chicago and over the

lines of railroad of the Junction Company to the line of railroad of the connecting carrier by railroad and to final destination outside the State of Illinois by such latter carrier by railroad in an unbroken line of carriage by railroad without the intervention of or the performance of any service in connection therewith by the shipper or consignee or the owner of the freight so transported; that the shipments moving from points of origin outside the State of Illinois by railroad and destined to points on the lines of railroad operated by the Junction Company and which are delivered to the Junction Company on its receiving tracks by the trunk-line railroad handling the shipment into Chicago, move on through bills of lading from points of origin outside the State of Illinois to points of final destination on the lines of railroad operated by the Junction Company, and which latter company delivers such shipments to the con-
15 signees named in such bills of lading; that the shipments originating at points outside the State of Illinois which move through Chicago destined to points beyond, and which are delivered by the trunk-line railroad handling same into Chicago to the Junction Company for delivery to the trunk-line railroad that is to handle the traffic out of Chicago and to final destination beyond the State of Illinois move on through bills of lading from point of origin to final destination, and the shipper or consignee is not called upon to perform any service in connection therewith at any point and the originating carrier and the Junction Company and the delivering carrier or carriers handle same in an unbroken line of rail carriage from point of origin to final destination. When any particular car is unloaded on the tracks of the Junction Company, if it goes back empty the Junction Company transports the empty to the nearest receiving track of the railroad company to which said car belongs; if it goes back loaded from the tracks of the Junction Company, the said company transports it as hereinafter pointed out. The inbound freight which is moved in the manner hereinbefore indicated to points or industries located on the lines of railroad of the Junction Company and so served by it comprises many different commodities.

(c) When industries located in the stockyards district on the lines of the Junction Company wish cars for loading outbound dead freight, they either use for that purpose empties then in their possession, from which they have unloaded inbound freight, or they notify the trunk-line railroad over which they desire the outbound
16 loaded car to move, and the agent of such trunk-line railroad thereupon requests the Junction Company to place the empty car upon the switch track used by such shipper for loading purposes. After the car is loaded the shipper cards it, indicating the trunk-line railroad to which it is to be delivered and the point to which it is destined, and the Junction Company, with its motive power, hauls the car to the connecting or receiving track of the trunk-line railroad designated by the shipper; that such car is handled on through bill of lading from point of origin to final destination.

(d) The movement of freight hereinbefore last described relates solely to inbound and outbound freight in carloads. There is also located in the stockyards district, on the tracks operated by the Junction Company, a station known as the Union Freight Station. At this station the Junction Company transacts the following business:

Various industries located in or about the stockyards deliver freight in less-than-carload lots, known as L. C. L. freight, to the said Union Freight Station, where the employees of the Junction Company place it in a car belonging to the trunk-line railroad company which will eventually receive the car from the Junction Company. Such L. C. L. freight consists of many different commodities, and large portions of it are destined to points beyond the State of Illinois. The cars when so loaded are moved by the Junction Company's motive power, operated by its employees, from the tracks of the Junction Company at the said Union Freight Station and placed on the receiving tracks of the respective trunk-line railroads that will handle said freight out of Chicago, from which receiving tracks the trunk-line
17 railroads pick up the cars with their own motive power and forward them to their final destination.

The Junction Company frequently, with its own power, hauls L. C. L. freight from industries on its line of railroad to the Union Freight Station, where it distributes said freight in the same manner as if said freight had been delivered to the Union Freight Station by the shipper. The Junction Company sorts and puts such freight into proper cars for the trunk-line carriers, and such freight, when loaded, is transported by the Junction Company with its own power and placed on the receiving tracks of the trunk-line railroad, as hereinbefore last set forth.

The Junction Company, in the name of the trunk-line railroad which is to forward the freight, gives a receipt to the consignor or shipper for all freight delivered to the Junction Company at the Union Station. In order to enable the Junction Company to receipt in the name of the trunk-line railroad receiving the same from the Junction Company, each of the trunk-line railroads terminating in Chicago and connecting with the Junction Company has furnished the Junction Company with stamps to be used by it and its employees, in the name of said receiving trunk-line railroad, for such L. C. L. freight delivered to the Junction Company at said Union Station. The stamps so furnished by the trunk-line railroads for the use of the Junction Company, as aforesaid, are substantially in the form furnished by the Chicago & Northwestern Railway Company, which is as follows:

"Received by Union Freight Station, Chicago, C. & N. W.
18 Ry., not responsible beyond the terminal station on the line. December 17, 1909, subject conditions of local freight tariff.

"J. HEWITT, *Agent*,

"Per ——— ———."

These receipts may be exchanged by the consignor or shipper for a bill of lading at the office of the trunk-line railroad, but sometimes freight for which such receipts have been issued by the employees of the Junction Company, in the name of the trunk-line railroads, moves to its destination without such receipts having been exchanged for bills of lading.

In instances where prepayment of charges is required on shipments of L. C. L. freight delivered to the Junction Company at its Union Station, the said Junction Company collects the charges and receipts for such freight and the payment of the charges in the name of the trunk-line railroad to which the Junction Company delivers the same, and in turn the Junction Company remits all such charges so collected by it to said trunk-line railroad.

That no inbound L. C. L. freight having destination in Chicago or elsewhere is handled by the Junction Company at its Union Station, except as set forth in the paragraph next following.

The Junction Company has an arrangement with the Baltimore & Ohio Railroad Company, a trunk-line railroad, by which the latter brings from points east of Chicago L. C. L. freight destined to points west of and outside the State of Illinois, and by which the latter delivers to the Junction Company L. C. L. shipments of freight originating at points east of Chicago and outside the State of Illinois and destined to points west of and outside the State of
19 Illinois, and the Junction Company unloads such L. C. L. shipments of freight at its Union Station, distributes it into cars of the western trunk-line railroads which are to carry it to its final destination, and delivers said cars to said trunk-line railroads upon the receiving tracks of said railroads, and such L. C. L. freight is thus transported from point of origin outside the State of Illinois through Chicago over the railroad tracks of the Junction Company, the service over the tracks of the Junction Company being performed by said Junction Company, to the tracks of the trunk-line railroad operating west of Chicago, and thence to final destination, without the intervention or performance of any service in connection therewith by the shipper, consignee, or owner of the freight; that the shipments so handled move from point of origin to final destination on through bills of lading.

(e) The trunk-line railroads originating shipments of live stock outside the State of Illinois and destined to points in the stock-yard district, generally haul same with their own motive power from their points of connection with the tracks of the Junction Company, and over the tracks of the said Junction Company to the loading docks, chutes, or platforms of the Stock Yard Company.

(f) That in many instances, however, carload shipments of horses originating outside the State of Illinois and destined to points in the stock-yards district, are delivered to such points by the Junction Company with its own motive power. Such shipments destined to

a consignee in the stock-yards district are usually transported from points of origin to Chicago in the stock trains of the trunk-
20 line railroads. The trunk-line railroad hauls the car with its own motive power until it reaches what is known as the loading docks, chutes, or platforms of the Stock Yard Company, and there the car containing the horses is set aside and picked up by one of the engines of the Junction Company and hauled by it to the unloading chutes specially provided by the Stock Yard Company for the accommodation of horses. The cars so delivered by the trunk-line railroad to the Junction Company at the chutes or platforms of the Stock Yard Company are carded with a transfer card showing the name of the consignee and the point of delivery to such consignee on the tracks of the Junction Company; such shipments move into Chicago on through bills of lading from point of origin to point of final delivery on the tracks of the Junction Company.

(g) Carload shipments of live stock originating at the stock-yards district, destined to points beyond Illinois, are placed at the loading chutes of the Stock Yard Company by the Junction Company, pursuant to orders of the trunk-line railroads which will carry them to their final destination, and such cars are loaded by the Stock Yard Company. If feeding charges accrue on such outbound shipments of live stock, the Stock Yard Company notifies the agent of the trunk-line railroad of the amount of the feeding charges that have so accrued, and the trunk-line railroad collects such charges at point of final destination, and when so collected remits them to the Stock Yard Company; said charges are not published or filed with the Interstate Commerce Commission in any tariff issued by the Stock Yard Company or in which it has lawfully concurred, nor are
21 such charges published and filed with the Interstate Commerce Commission in any tariff issued by any trunk-line railroad or in which it has lawfully concurred.

(h) The trunk-line railroads transporting freight in interstate shipments to and from points in the stock-yards district are not all supplied with scales, and the Stock Yard Company maintains an office called the register's office, which furnishes weights on all outgoing freight from the stock yards; the men operating the register's office and performing said weighing are employees of, and are paid by, the Stock Yard Company, but the expense of maintaining such office is divided pro rata among the various railroads making use of such service and the Stock Yard Company is reimbursed for its expense in maintaining the same. The scales used in weighing such shipments are the same scales that are used by the Stock Yard Company when live stock is weighed for commission men doing business at the yards, and they are necessary for the use of the Stock Yard Company in the transaction of its stock-yard business.

(i) The railroad equipment which the Stock Yard Company had and owned at the time of the lease of December 15, 1897, hereinbefore referred to, was delivered by it to the State Line Company, which in turn delivered the same to the Junction Company, and the latter

still has a part or portion of the equipment so leased, but has also purchased additional equipment. Said Junction Company uses its engines and cars for the transaction of its own corporate business in and about the stock-yards district, and it does not permit
22 its equipment to go beyond its own rails or out of the State of Illinois, except that it sometimes leases portions of its equipment to such persons or other companies that may desire to lease same.

(j) The Junction Company is responsible to the trunk-line railroads for such cars as are detained on its tracks longer than a given time, and the Junction Company in turn collects demurrage from any consignors or consignees of interstate freight who detain the cars longer than the free time allowed by the rules of the Junction Company.

(k) The Junction Company has scales suitable for the weighing of cars, and frequently, at the request of the shipper or consignee of interstate freight, weighs such freight so consigned for such shipper or consignee, and for such service is paid by the consignor or consignee a fixed sum; and it also weighs all interstate freight consigned to the Stock Yard Company as consignee, such as hay, corn, and other products necessary for the use of the Stock Yard Company in the operation of its stock yards and in the feeding or caring for the cattle and live stock coming into or passing through such yards. The Stock Yard Company pays the Junction Company for this service, and the Junction Company's report of the weight frequently constitutes the basis upon which the freight charges are assessed against the consignor or consignee by the trunk-line railroad delivering such freight to the Junction Company for final delivery. Such shipments move from points of origin, which in many instances are outside the State of Illinois, to the stock yards on through bills of lading.

(l) That the method and manner in which the Junction Company handles all kinds of freight, whether inbound or outbound or
23 whether moving through Chicago over the tracks of the said Junction Company, as hereinbefore set out, is the same method and manner adopted and performed by the Stock Yard Company in handling the same kind and character of freight prior to the time it leased its lines of railroad to the State Line Company and which were subsequently leased to the Junction Company.

IX.

Your petitioner further alleges that when the trunk-line railroads bring live stock to the stock yards, the waybills accompanying said shipments are handed by the employees of the trunk-line railroads transporting the stock to the stock yards to the employees of the Stock Yard Company, with what is termed a "live-stock stub" attached. Such waybills are taken by employees of the Stock Yard Company to unload and count the animals in each car, and then the

waybills, together with the stub, are sent by the employees of the Stock Yard Company to the office of the auditor of the Stock Yard Company; the live-stock stub is retained by such auditor, and the original waybill is delivered to the local agent of the trunk-line railroad delivering the stock at the stock yards, for its record. The charges appearing on the waybills are collected by the Stock Yard Company from the consignees, who are generally commission men doing business at the stock yards, on the basis of the charges shown in the live-stock stub. The Stock Yard Company advances to the trunk-line railroads all charges, and twice a week it collects from the consignees the moneys it has advanced to the trunk-line railroads for the transportation of the stock from points outside the State
24 to the stock yards. The person who acts as auditor of the Stock Yard Company also acts as auditor of the Junction Company.

X.

Your petitioner further alleges that the Junction Company has published tariffs showing the charges which it exacts and collects for its services in the transportation of property, as hereinbefore set forth, and also the charges that it makes for freight handled and transported by it in the method hereinbefore set out and delivered to it at the Union Freight Station hereinbefore referred to; that the tariffs referred to are in general circulation in and about the city of Chicago, and especially in and around the stock-yard district, but said tariffs have not been published and filed with the Interstate Commerce Commission under and in accordance with the terms and conditions provided in section 6 of the act to regulate commerce; that the said Junction Company, by reason of the facts hereinbefore set forth, is a common carrier engaged in the transportation of property by railroad from points in the State of Illinois to points in other States of the United States, and to points in the Territories of the United States and in the District of Columbia, and is a common carrier engaged in the transportation of property by railroad from points in other States of the United States and from points in the Territories of the United States and the District of Columbia, to points in the State of Illinois; that the respective trunk-line railroads engaged in the transportation of property by railroad from points in other States to points on the lines of railroad operated by the Junction Company, and which property
25 when it reaches the lines of railroad operated by the Junction Company is handled in one or more of the methods hereinbefore set out, have published and now have on file with the Interstate Commerce Commission, their respective tariffs which show the charges exacted by said trunk-line railroads for the services performed by them, and which show the charges of the Junction Company for the service performed by said Junction Company, as hereinbefore set out; that said Junction Company, however, does not concur or join in said tariffs and is in no way a party to said tariffs,

as required by section 6 of the act to regulate commerce; that by reason of the acts of said Junction Company as hereinbefore set forth in this bill, relating to its handling of all kinds of freight, whether dead freight or live stock, whether in carloads or less than carloads, said Junction Company is a common carrier engaged in the transportation of property from points in various States and Territories and the District of Columbia to points on its line of railroad in the State of Illinois, and from points on its line of railroad in the State of Illinois to points in the various States and Territories of the United States, and that said Junction Company has not filed with the Interstate Commerce Commission, created by the act to regulate commerce, nor does it keep open to public inspection its schedule showing all rates and charges for transportation between different points on its own road and between points on its own road and points on the road of any other carrier by railroad, and that said Junction Company is engaged in the transportation of property

26 from points in the various States and Territories of the United States to points in the State of Illinois, and from points in the State of Illinois to points in the various States and Territories of the United States, without having filed and published a schedule of its rates and charges for such transportation, in accordance with the provisions of the act to regulate commerce, and more particularly section 6 thereof.

That the Stock Yard Company is the actual owner of the lines of railroad operated by the Junction Company and holds the legal title thereto in its proper corporate name, and, in addition, owns the rolling stock delivered by it to the State Line Company, and in turn delivered to the Junction Company; and by reason thereof said Stock Yard Company is in fact the owner of a railroad engaged in the transportation of property by railroad from points in the various States and Territories of the United States and in the District of Columbia to points on its line of railroad in the State of Illinois, and is engaged in the transportation of property from points on its line of railroad in the State of Illinois to points in the various States and Territories of the United States and the District of Columbia; that said Stock Yard Company does not file with the Interstate Commerce Commission, created by the act to regulate commerce, and print and keep open to public inspection its schedules showing its rates and charges for transportation between the different points on its own road and between points on its own road and points on the line of any other carrier by railroad; that said Stock Yard Company not only fails to file and publish schedules of its rates and charges aforesaid, but it does not concur in the tariffs of any other railroads that contain the rates and charges of said Stock Yard Company.

27 That the Stock Yard Company has at all times, and now has, full knowledge as to the nature of the transportation, as hereinbefore set out, carried on by the Junction Company; that

during all the time the Junction Company has operated the lines of railroad owned by the Stock Yard Company the Stock Yard Company has had full knowledge that the Junction Company did not file with the Interstate Commerce Commission the schedules of the rates, fares, and charges exacted by the Junction Company in the transportation of property, as hereinbefore set out, in accordance with the provisions of section 6 of the act to regulate commerce; and with that knowledge the said Stock Yard Company has suffered and permitted the Junction Company to use and operate the lines of railroad owned by the Stock Yard Company and to perform the transportation services, as hereinbefore set out, without requiring or attempting to require or in any way calling upon the Junction Company to file tariffs with the Interstate Commerce Commission, in accordance with section 6 of the act to regulate commerce, showing the rates, fares, and charges exacted by the Junction Company for the transportation performed by said Junction Company, as hereinbefore set out.

XI.

Your petitioner further alleges that under and by virtue of Exhibit D, hereinbefore referred to, the Junction Company pays to the Stock Yard Company, as rental for the lines of railroad owned by said Stock Yard Company and operated by the Junction Company, two-thirds of the entire net earnings and revenue re-
28 ceived by the Junction Company from the operation of said lines of railroad; that by reason of said provision the income derived by the Stock Yard Company for the use of its railroad depends upon the amount of business transacted by the Junction Company, and that all increase in the volume of property transported by the Junction Company inures to the benefit of the Stock Yard Company in proportion to the percentage of the net earnings to which it is entitled under said written instrument.

XII.

Your petitioner further alleges that the defendant, The Chicago Junction Railways and Union Stock Yards Company (herein called the "Investment Company"), was organized in July, 1890, under the laws of the State of New Jersey, as an investment company for the purpose of acquiring and holding the shares of the Stock Yard Company, as will appear by reference to its charter, hereinbefore referred to as Exhibit B; that immediately upon organization of the said Investment Company in 1890 it acquired and became the owner of, and is now the owner of, over 90 per cent of the shares of the capital stock of the Stock Yard Company, and that said Investment Company owns all the shares of the capital stock of the Junction Company except a few necessary to qualify directors; that substantially all the income and earnings of the Investment Company

are derived from the earnings and dividends on the stock of the Union Stock Yards Company and the Junction Company; that substantially all of the property owned by the Investment Company consists of the stock of the Stock Yard Company and the stock of the Junction Company.

29 XIII.

Your petitioner further alleges that the defendants, David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, are a copartnership trading under the firm name and style of Louis Ffaelzer & Sons, and are engaged in the business of buying, slaughtering, and selling for general consumption live stock, including cattle, sheep, and hogs, and in the manufacture and sale of packing-house products; that their present place of business is located in the city of Chicago, Cook County, Ill., in what is known as the stock-yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yard Company. Said firm, in the prosecution of its business, purchases live stock at the stock yards; said firm also purchases live stock, including cattle, sheep and hogs, at points outside the State of Illinois, which it ships from said points to the stock yards, the said shipments moving from points of origin on through bills of lading over the lines of the Junction Company, in connection with the originating trunk-line carriers; that the live stock so purchased, as before stated, is slaughtered in the packing house of said firm. As a result of such business, more cattle are shipped in than would otherwise be shipped in to the said stock yards; that all the live stock shipped into the stock yards, as aforesaid, and purchased, slaughtered, and manufactured by said firm, is shipped into the stock yards over lines of railroad owned by the Stock Yard Company and operated by the Junction Company, and the dressed meats, both fresh and cured, and the manufactured packing-house products are by said Louis Pfaelzer & Sons shipped
30 out over the lines of railroad owned by the Stock Yard Company and operated by the Junction Company, in connection with the trunk-line railroads, to points in other States, and moved on through bills of lading, in the same manner that all freight is handled in and out of said stock yards, as hereinbefore alleged.

That the said defendants doing business under the firm name and style of Louis Pfaelzer & Sons have entered into a certain contract or agreement with the Stock Yard Company, a copy of which is hereto attached, marked "Exhibit E," and made a part hereof; that said contract is now in process of performance and will, unless restrained by this court, be carried out. As a result of such contract and in accordance with the terms and provisions thereof the Stock Yard Company will pay to Louis Pfaelzer & Sons the sum of $50,000, and the performance of said contract has been guaranteed by the Investment Company, and in default of payment of said sum by the

Stock Yard Company said sum of money will be paid to Louis Pfaelzer & Sons by the Investment Company.

Your petitioner further avers that such payment, although ostensibly a payment for the purpose of encouraging, developing, and retaining at or near the stock yards in Chicago the business of said Louis Pfaelzer & Sons, which will increase the amount of interstate freight coming in and going out from the yards of said Stock Yard Company and over the lines of railroad owned by said Stock Yard Company and operated by said Junction Company, and likewise increase the yardage to be collected by said Stock Yard Company on live stock and its charges for feed, and also increase the earnings of the
31 Junction Company by increasing the amount of property transported by the Junction Company in interstate commerce over the lines of railroad owned by the Stock Yard Company, and thus increase the rentals of the Stock Yard Company accruing from the earnings derived from the transportation of property in interstate commerce by railroad under said lease to the Junction Company; that the said payment by the Stock Yard Company to Louis Pfaelzer & Sons of the amount of money in accordance with the terms of said contract will in substance and effect be a payment by the Stock Yard Company, as the owner of a railroad engaged in interstate commerce, as defined in the act to regulate commerce, to a shipper or consignee of freight moving in interstate commerce over said lines of railroad owned by said Stock Yard Company, and said payment will in fact constitute a payment of money by the owner of a railroad and a common carrier engaged in the transportation of property by railroad between points in the various States of the United States to a shipper of property transported between points in the various States of the United States and over said line of railroad whereby such shipper has his property transported in interstate commerce by railroad at less rates and charges than are exacted by said common carrier by railroad from other persons moving property of the same character and description between the same points at the same time; that in making the payment as aforesaid the said Stock Yard Company, as the owner of a railroad engaged in interstate commerce and subject to the act to regulate commerce, will take its share of the earnings of the Junction Company, derived by the latter in transporting property in interstate commerce over
32 the lines of railroad owned by the Stock Yard Company, and by said Junction Company paid to the Stock Yard Company, to use in making payment to Louis Pfaelzer & Sons of the amount named in said contract.

Your petitioner further alleges that the payment of said amount of money to Louis Pfaelzer & Sons, in accordance with the terms of said contract, will constitute in effect a rebate and an unlawful discrimination, in violation of section 2 of the act to regulate commerce; and will in effect constitute a device whereby an undue advantage will be given to, and an unlawful discrimination will be practiced in favor of, the said Louis Pfaelzer & Sons by the said Stock Yard Company

in the transportation of the property of the said Louis Pfaelzer & Sons in interstate commerce over the lines of railroad owned by said Stock Yard Company, and will in fact also constitute a concession, rebate, and an unlawful discrimination, whereby the property of the said Louis Pfaelzer & Sons is by device transported in interstate commerce over the lines of railroad owned by said Stock Yard Company at less charges than are exacted from other shippers for the same service between the same points, and at less than the tariff charges therefor, which it is the duty of the Stock Yard Company and the Junction Company to publish and file with the Interstate Commerce Commission; and will in fact constitute a violation of the act of Congress approved February 19, 1903, and as amended June 29, 1906, commonly known as the "Elkins law."

Your petitioner further alleges that by reason of the facts hereinbefore stated, the Stock Yard Company is the owner of a rail-
33 road engaged in the transportation of property from points in the various States and Territories of the United States to points on its line of railroad in the State of Illinois, and from points on its line of railroad in the State of Illinois to points in various States and Territories of the United States, and is engaged in the transportation of property by railroad between points on its line of railroad in the State of Illinois to points in other States and Territories of the United States, and from points in the various States and Territories of the United States to points on its line of railroad in Illinois; that by reason of the facts hereinbefore stated the Junction Company is a common carrier engaged in the transportation of property by railroad between points in the several States and Territories of the United States and points on its line; that by reason of the facts hereinbefore set forth the Stock Yard Company and the Junction Company are obligated and required to file with the Interstate Commerce Commission the rates and charges exacted by each or all of them in the manner hereinbefore set out, in accordance with the provisions of section 6 of the act to regulate commerce; that by reason of the facts hereinbefore stated, said Stock Yard Company and the said Junction Company are each required to file with the Interstate Commerce Commission reports and monthly statements provided for in section 20 of the act to regulate commerce, and in accordance with the rules and regulations prescribed by the commission in relation thereto, which said reports and statements said defendants last named failed and refused, and still fail and refuse, to file.

34 XIV.

Your petitioner further alleges that the said Stock Yard Company and the Investment Company will, unless restrained by this court, carry out the terms and provisions of the contract hereinbefore referred to as "Exhibit E"; that unless restrained by this court the said Investment Company will enter into an independent contract in its own behalf, of the same nature and character of said Exhibit E,

whereby said Investment Company will pay to said defendant Louis Pfaelzer & Sons the amount of money named in said Exhibit E, upon the performance of the terms and conditions required of said Louis Pfaelzer & Sons by said new contract, which will contain the same covenants as contained in said Exhibit E; that said contract referred to as "Exhibit E" is by its terms required to be performed in Chicago, Cook County, Ill., and if said Investment Company and the said defendants Louis Pfaelzer & Sons enter into an independent contract for the payment of the money provided for in said Exhibit E, said new contract will by its terms require performance in the county of Cook and the State of Illinois; that the payment of said $50,000, or any part thereof, by the said Investment Company to said Louis Pfaelzer & Sons under said Exhibit E, or under any independent contract of similar import made between said Investment Company and said Louis Pfaelzer & Sons, will in fact constitute a violation of section 2 of the act to regulate commerce and of the act of Congress approved February 19, 1903, and as amended June 29, 1906, commonly known as the "Elkins law."

35

XV.

That the said defendant Investment Company owns at least 90 per cent of the stock of the Stock Yard Company, and practically all of the stock of the Junction Company, and therefore controls the management of the Junction Company and the Stock Yard Company; that the Investment Company, the Stock Yard Company, and the Junction Company are all practically under the same management and control, and that the interests of the three defendants named are practically one and the same, and if the Investment Company enters into an independent contract with Louis Pfaelzer & Sons, the said contract by the Investment Company will be made for and in behalf of the Stock Yard Company.

XVI.

Wherefore this petitioner prays that a subpœna or civil process may issue according to the course of equity, requiring the abovementioned defendants and each of them to appear at such time and place as this honorable court may determine, and then and there make full and complete answer of all the matters hereinbefore charged, full and particularly as if each of said defendants were specially interrogated in regard thereto, but not under oath, the answer under oath being hereby specifically waived; that upon the filing of this petition an order be made by your honorable court directing the method of service and pendency of this proceeding; that such order or orders may be entered pending the cause as may secure a speedy hearing and determination of the matters and things

36 charged in the foregoing bill of complaint; that such order or orders may be entered pending the cause as are necessary to procure all such information that the court may think needful to

enable it to form a just judgment of the matters and things charged in the foregoing bill of complaint; that upon final hearing said Stock Yard Company and the said Junction Company be enjoined and restrained from and after such date as may be fixed by the court from engaging in the transportation of property in interstate commerce, as hereinbefore set out in this bill, until they and each of them have filed lawful tariffs with the Interstate Commerce Commission in conformity with section 6 of the act to regulate commerce, showing the charges demanded, collected, and received by them and each of them for the services performed, as hereinbefore set out, in the transportation of property in interstate commerce, as hereinbefore set out; or that the court issue a mandatory injunction requiring the said defendants to file with the Interstate Commerce Commission lawful tariffs in conformity with section 6 of the act to regulate commerce, showing the charges demanded, collected, and received by them and each of them for the services performed, as hereinbefore set out, in the transportation of property in interstate commerce, as hereinbefore set out, if in the judgment of the court said peremptory or mandatory injunction is deemed proper to secure compliance on the part of said defendants with the act to regulate commerce; that upon final hearing said Stock Yard Company be permanently restrained and enjoined from carrying out the terms and provisions of its contract made with the said defendants Louis Pfaelzer
37 & Sons, and the individual members of said copartnership, as hereinbefore named in the bill; and that said Stock Yard Company be restrained and enjoined from paying to said Louis Pfaelzer & Sons, or to the individual members of said firm, or any one of them, their successors and assigns, the sum of money therein designated, or any part thereof; that the said Investment Company be permanently enjoined and restrained from carrying out the terms and provisions of said contract hereinbefore referred to as "Exhibit E," under its written guaranty therefor, and that it be restrained and enjoined from paying to the said Louis Pfaelzer & Sons, or to the individual members of said firm, or any one of them, their successors and assigns, the sum of money designated in said contract, or any part thereof; that the said David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, doing business as Louis Pfaelzer & Sons, and the said firm of Louis Pfaelzer & Sons, and each and all of them, their successors and assigns, be restrained and enjoined from accepting from the Stock Yard Company or the Investment Company the sum of money designated in said contract, or any part thereof; and that the said Investment Company and the said Louis Pfaelzer & Sons, the individual members of said firm, or any one of them, their successors and assigns, be restrained and enjoined from entering into a separate contract providing for the payment of said sum of money referred to in said Exhibit E, or any part thereof, and that they be enjoined and restrained from entering into a contract of the same nature as Exhibit E; that upon final hearing said Stock Yard Company and said Junction Company be ordered and required to file

the reports and statements provided for in section 20 of the act to regulate commerce, and such other reports and statements as
38 may be required under the rules and regulations adopted by the Interstate Commerce Commission, in conformity with the provisions of said section; that a decree be entered therein requiring the defendants, and each of them, to pay the cost of this proceeding; and your petitioner prays for such other and further relief as the court may find equitable and just in the premises.

GEO. W. WICKERSHAM,
Attorney General.
WM. S. KENYON,
Assistant to the Attorney General.
WILLIAM E. LAMB,
Special Assistant to the Attorney General.
EDWIN W. SIMMS,
United States Attorney.

WASHINGTON, *District of Columbia, ss:*

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, having read the foregoing bill of complaint, and knowing the contents thereof, hereby make oath that the matters and facts therein stated are true to the best of my knowledge, information, and belief.

EDWARD A. MOSELEY,
Secretary of the Interstate Commerce Commission.

Subscribed and sworn to before me, H. S. Milstead, a notary public in and for the District of Columbia, this 8th day of June, A. D. 1910.

(Notarial seal.)

H. S. MILSTEAD,
Notary Public.

39 EXHIBIT A.

Charter.

An act to incorporate the Union Stock Yard and Transit Company of Chicago.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That John L. Hancock, Virginius A. Turpin, Roselle M. Hough, Sidney A. Kent, Charles M. Culbertson, Lyman Blair, David Kreigh, Joseph Sherwin, Martin L. Sykes, jr., George W. Cass, James F. Joy, John F. Tracy, Timothy B. Blackstone, Joseph H. Moore, John S. Barry, Homer E. Sargent, Burton C. Cook, John B. Drake, William D. Judson, and such other persons as may associate with them for that purpose, be, and the same are hereby, made a body politic and corporate, by the name and style

of "The Union Stock Yard and Transit Company of Chicago," with perpetual succession; and by that name and style may contract and be contracted with, sue and be sued, have a common seal, which they may alter and revise at pleasure, and may have and exercise all the rights, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act, as the same are herein set forth.

SEC. 2. That said company shall have the power to locate, construct, and maintain upon the land purchased for such purpose, in convenient proximity to the southerly limits of the city of Chicago and west of Wallace Street as the same would be extended in a straight line south from said city limits, all the necessary yards, inclosures, buildings, structures, and railway lines, tracks, switches, and turn-outs, aqueducts, for the reception, safe-keeping, feeding, and watering, and for the weighing, delivery, and transfer of cattle and live stock of every description, and also dead and undressed animals that may be at or passing through or near the city of Chicago, and for the accommodation of the business of a general union stock yard for cattle and live stock, including the erection and establishment of one or more hotel buildings, and the right to use the same, if deemed expedient, for the convenience of drovers, dealers, and the public doing business at the said yards; and shall have power to repair, enlarge, relocate, reconstruct, and alter the said yards, structures, and buildings, or any of them, as shall become necessary or expedient from time to time, subject, nevertheless, to the restrictions above mentioned as to the location of the same, and shall have the right and power to make advances of money upon such cattle and live stock, for freight or other purposes, as may become expedient, and for such care, subsistence, and handling and advances made upon such stock, the said company may take and require to be paid such reasonable charges as may be deemed just and proper, and shall have the power to lease the public house or hotel building so erected for the accommodation of those drawn together by the business of such yards upon such terms and conditions as shall be deemed proper, or to make such other arrangements for the management thereof as may be deemed advisable from time to time; and, if the same shall be kept and managed by said company, shall have the power to fix and require to be paid such reasonable charges for the accommodation afforded by said house or houses as shall be just and proper.

SEC. 3. That said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be selected for its said yards, so as to connect, outside of the city of Chicago, the same with the tracks of all the railroads which terminate in Chicago, the lines of which enter the city on the south between the lake shore and the southwest corner of said city, and on the west between said last-named point and the north line of section number nineteen (19), township number thirty-nine (39) north, range fourteen (14) east of the third principal meridian, and shall have the

right and power to make such connections with such suitable side tracks, switches, and connections as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks of such company or companies which now is or hereafter may be constructed, for the purposes aforesaid, as may be agreed upon between the parties; and shall have the power and authority to locate, and, from time to time, renovate, change, alter, construct, and reconstruct, and fully to finish and maintain its said railroad or roads, side tracks, and connections, and to transport and allow to be transported thereon between said railroads and cattle yards, all cattle and live stock and persons accompanying the same to and from said yards, and may also transport and allow to be transported between the railroads entering said city, and so connected by the road or roads hereby authorized, by steam or other power, freight and property of every kind as well as stock and cattle, and may fix and establish, take and receive, such rates of toll for all freight and property so transported between said several railroads as the directors shall, from time to time, establish: Provided, all fees and charges for freights, hotel bills, feeding, carrying, and everything done by reason of the powers herein given, shall be subject to any general law that may be passed by the legislature of this State, in reference to stock yards or railroads; and for the purpose of
41 constructing said railroad and appurtenances, shall have the authority and power to lay out, designate, and establish the road, in width not exceeding one hundred feet through the entire line thereof, and to mark out and designate the ground for such yard and other structures, and may acquire such lands, which may be necessary for the purpose of constructing said tracks, either by purchase or in the manner hereinafter provided, with the right to let or demise the real estate and property so acquired, and improvements thereon; and shall also have the right and authority to take a lease or leases of ground for said yards, upon such terms as the directors of said company may deem just and reasonable, and all contracts and agreements made in connection with such lease or leases, shall be valid and binding upon the parties thereto; and said company shall have the right, with the consent of the proper authorities having control thereof, to locate or construct its roads across any street or highway, doing as little damage and discommoding the public as little as may be consistent with the use of said track so laid.

SEC. 4. The said company shall have power and authority to receive, take, and hold all such voluntary grants and donations of land and real estate as may be made to said company, for the purpose aforesaid, and may contract and agree with the owners and occupiers, of any land which may be necessary for such purposes, or which said company may desire to use in connection therewith, in order to carry out the objects of its organization; and said company

is authorized and empowered to receive and take grants and conveyances of all interests and estates in such lands to them and their successors and assigns in fee or otherwise, and in case the said company can not agree with the owners or occupiers of lands, necessary for the railroad tracks herein permitted to be constructed, so as to procure the same by the voluntary deed of such owners or occupiers, or if such owners or occupiers or any of them be a femme covert, infant non compos mentis unknown or out of the county of Cook, the same may be taken for the purpose of constructing said railroad track (but for no other purpose) and paid for, if any damages are awarded, in the manner provided for in the "act to amend the law condemning the right of way for purposes of internal improvement," approved June 22, A. D. 1852, and the acts amendatory thereof, to the benefits of all the rights, privileges, franchises, and immunities contained in the provisions of which said act and the amendments thereof, said company shall be, and are hereby, declared entitled.

SEC. 5. The capital stock of said company shall be one million of dollars, which stock shall be divided into shares of one hundred dollars each, which shall be deemed personal property, and may be taken and held by individuals, and may be issued to such persons, and certified, transferred, and registered in such manner and in such places as may be ordered and provided for by the board
42 of directors, who shall have the power to require the payment for the stock subscribed, in the manner, at the time, and in such terms as they may direct; and the same may be paid for in real estate or in personal property, under the direction of said board of directors, who shall also have power to declare dividends upon profits earned by said company. On the refusal or neglect of any stockholder to make payment on the requisitions of the board of directors, the share or shares of such delinquent may, after thirty days' public notice in one of the daily newspapers of Chicago, be sold at public auction, under such rules as the directors may adopt.

SEC. 6. The corporate powers of said company shall be vested in and exercised by a board of directors, to consist of not less than five nor more than nine in number, and such other officers, agents, and servants as they shall appoint. The first board of directors shall consist of Martin L. Sykes, Jacob N. McCullough, James F. Joy, John F. Tracy, Timothy B. Blackstone, John L. Hancock, Roselle M. Hough, Charles M. Culbertson, and Virginius A. Turpin, who shall hold their office until the third Wednesday of January, A. D. 1866, and until their successors are elected and qualified. Vacancies in said board may be filled by a vote of two-thirds of the directors remaining, such appointees to continue in office until the next regular annual election of directors, and which said annual election shall be held on the third Wednesday of January in each year at such place as the directors may appoint, thirty days' notice being given in one newspaper in Chicago of the time and place of such election.

SEC. 7. At any election of directors, each share of stock shall be entitled to one vote, to be given either in person or proxy, and the person receiving the largest number of votes to be declared duly elected and to hold the office until the next annual election and until their successors shall be duly qualified: and if, for any cause, the annual election shall fail the company shall not be dissolved, but the directors in office shall continue to hold their places as directors until an election shall be had and their successors duly elected and qualified.

SEC. 8. The directors herein named shall organize their board by electing one of their number president, and by appointing a secretary and treasurer. The said company shall have power to make, ordain, and establish by-laws, rules, and regulations necessary to fulfill the purposes and carry into effect the provisions of this act and for the well ordering and securing the affairs, business, and interests of the company, provided the same shall not be repugnant to the Constitution and laws of the United States or of this State.

SEC. 9. Should it be necessary for the construction of the road or roads hereby authorized to be built to cross any water course, stream of water, or road, it shall be lawful, under the direc-
43 tion of the proper authorities having control thereof, to construct the said road upon or across the same, provided the same shall be so constructed as not to unnecessarily impair the usefulness of said road or water course.

SEC. 10. The said company is hereby authorized, from time to time, to borrow such sums of money as it may deem expedient, and to issue and dispose of their bonds therefor in denominations of not less than five hundred dollars each, and to an amount which, in the aggregate, shall not exceed five hundred thousand dollars and bearing such rate of interest, not exceeding ten per cent, as the company shall deem expedient, and to secure the payment of the same may execute a mortgage or deed of trust of all its property of every description, in possession or to be acquired, with such terms, stipulations, and conditions as may be deemed expedient.

SEC. 11. Nothing in this act contained shall be deemed, taken, or construed as conferring upon the company hereby created any powers or authority to maintain or operate a railroad for the conveyance of passengers or freight in the city of Chicago. And the said company hereby incorporated is hereby expressly prohibited from making any contract or having any agreement, either expressed or implied, with any railroad company to receive cattle, hogs, or other freight transported over the road of any such railroad company, to the exclusion of any person or corporation having a stockyard in proximity to said city; and said company hereby incorporated shall not receive any cattle, hogs, or other stock consigned to any other person or company having a stockyard in proximity to said city; and any willful violation of any of the provisions of this act by the company hereby incorporated shall work an absolute forfeiture of all the rights, privi-

leges, and immunities conferred by this act, and the franchises hereby conferred shall become utterly void.

SEC. 12. This act shall be deemed a public act, and shall be in force from and after its passage.

ALLEN C. FULLER,
Speaker of House of Representatives.
WILLIAM BROSS,
Speaker of the Senate.

Approved February 13, 1865.

RICHARD J. OGLESBY.

44 EXHIBIT B.

Certificate of organization of the Chicago Junction Railways and Union Stock Yards Company.

STATE OF NEW JERSEY, *ss:*

This is to certify that we, William J. Sewell, John Hoey, William C. Lane, Alric R. Herriman, George H. Taylor, Daniel P. Griswold, Augustus Fielding, Arthur L. Shipman, and Arthur H. Gregory, do hereby associate ourselves into a company, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act concerning corporations," approved April 7th, 1875, and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First. The name which we have assumed to de-ignate such company and to be used in its business and dealings is "The Chicago Junction Railways and Union Stock Yards Company."

Second. The place in this State where the business of such company is to be conducted is Jersey City, in the county of Hudson. The principal part of the business of said company within this State is to be transacted at Jersey City, in the county of Hudson. The principal office and place of business of said company out of this State is to be situated in the city of New York, in the State of New York.

Third. The objects for which the company is formed are to purchase, hold, pledge, transfer, sell, or otherwise dispose of or deal in the shares of the capital stock of The Union Stock Yard and Transit Company, a corporation organized under the laws of the State of Illinois; to receive, collect, and dispose of the dividends on any of said shares held by it, and to exercise in respect of any of said shares held by it any and all the rights, powers, and privileges of owners of shares of said capital stock; to purchase, hold, and dispose of any bonds, debentures, or other evidences of indebtedness of said The Union Stock Yard and Transit Company, and to do any and all acts and things tending to increase the value of the shares of the capital stock of said company; to issue bonds and to secure the same
45 by a pledge or deed of trust of or upon any part of such shares

or any other property held or owned by the company, and to sell or pledge such bonds for proper corporate purposes, and in the promotion of its corporate business to purchase, receive, hold, and dispose of any securities of any person or corporation, whether such securities shall be bonds, mortgages, debentures, notes, or shares of capital stock, and in respect of any such securities to exercise any and all the rights and privileges of owners thereof, and to the extent authorized by law to lease, purchase, hold, sell, assign, mortgage, and convey real and personal property of any name and nature: Provided, That nothing herein contained shall be construed as being intended to form an insurance company, a banking company, a savings bank, a corporation intended to derive profit from the loan and use of money, a water company, a manufacturing company, a railroad company, turnpike company, or any company needing to possess the right of taking and condemning land.

Fourth. The portion of the business of said company which is to be carried on out of this State is to purchase, hold, pledge, transfer, sell, or otherwise dispose of or deal in the shares of the capital stock of said the Union Stock Yard and Transit Company; to receive, collect, and dispose of the dividends on any of said shares held by it, and to exercise in respect of any shares in said company any and all the rights, powers, and privileges of owners of shares of said capital stock; to purchase, hold, and dispose of any bonds, debentures, or other evidences of indebtedness of said company; to do any and all acts and things tending to increase the value of the shares of the capital stock of said company; to issue bonds secured by a pledge or deed of trust of or upon any of such shares or any other property held or owned by the company, and to sell or pledge the same for proper corporate purposes and in the promotion of its corporate business; to purchase, receive, hold, and dispose of any securities of any person or corporation, whether such securities shall be bonds, mortgages, debentures, notes, or shares of capital stock, and in respect of any such securities to exercise any and all the rights and privileges of owners thereof, and to the extent authorized by law to lease, purchase, hold, sell, assign, mortgage, and convey real and personal property of any name and nature.

The company proposes to carry on operations in the States of New York and Massachusets, and the other States of the United States, and in England.

Fifth. The total amount of the capital stock of said company is to be thirteen million dollars, and the number of shares into which the same is to be divided is 130,000. Of said stock six million five hundred thousand dollars, divided into 65,000 shares of $100 each,
46 shall be general or common stock, and six million five hundred thousand dollars, divided into 65,000 shares of $100 each, shall be preferred stock. Said preferred stock shall entitle the holder to receive in each year out of the net earnings of the company a fixed yearly dividend of six per cent payable half yearly before any dividends shall be paid upon or set apart for said general or common stock.

The dividends on the preferred stock shall be cumulative, so that if in any year dividends amounting to six per centum shall not be paid on said preferred stock the deficiency shall be a charge upon the net earnings of the company and be payable subsequently before any dividends shall be paid upon or set apart for the general or common stock. The balance of the net profits of the company, after the payment of the cumulative dividends of six per cent per annum to the holders of preferred stock, shall be distributed as dividends among the holders of the general or common stock as and when the board of directors shall determine. The holders of preferred stock shall, in case of liquidation or dissolution of the company, be entitled to be paid in full both the principal of their shares and the accrued dividend charge before any amount shall be paid to the holders of the general or common stock. The board of directors of the company may issue such preferred stock and the certificates therefor when and as the board shall by resolution determine.

Sixth. The amount of capital stock with which said company will commence business is twenty-five thousand dollars, divided into one hundred and twenty-five shares of said preferred stock of the par value of $100 each and one hundred and twenty-five shares of said general or common stock of the par value of $100 each.

Seventh. The names and residences of the stockholders and the number of shares held by each are as follows:

	Preferred shares.	Common shares.
William J. Sewell, Camden, N. J.	25	25
John Hoey, Hollywood, N. J.	25	25
William C. Lane, city, county, and State of New York	15	15
Alric R. Herriman, city, county, and State of New York	15	15
George H. Taylor, city, county, and State of New York	15	15
Daniel P. Griswold, city, county, and State of New York	10	10
Augustus Fielding, city, county, and State of New York	10	10
Arthur L. Shipman, city, county, and State of New York	5	5
Arthur H. Gregory, city, county, and State of New York	5	5

47 Eighth. The period at which said company shall commence is the 10th day of July, 1890, and the period at which it shall terminate is the 10th day of July, 1940.

In witness whereof we have hereunto set our hands and seals the 8th day of July, 1890.

W. J. Sewell. [L. S.]
John Hoey. [L. S.]
Wm. C. Lane. [L. S.]
Alric R. Herriman. [L. S.]
George H. Taylor. [L. S.]
Daniel P. Griswold. [L. S.]
Augustus Fielding. [L. S.]
Arthur L. Shipman. [L. S.]
Arthur H. Gregory. [L. S.]

Signed, sealed, and delivered in the presence of—

BENJ. D. SHREVE,
By W. J. SEWELL.
WM. D. GUTHRIE,
29 Nassau Street, New York.
(As to all except Sewell and Hoey.)
JOSEPH B. BRAMAN.
(As to Hoey.)

STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph B. Braman, a commissioner of deeds for the State of New Jersey, residing in the county and State of New York, do certify that on this eigth day of July, in the year one thousand eight hundred and ninety, in the city and county of New York aforesaid, before me personally appeared John Hoey, William C. Lane, Alric R. Herriman, George H. Taylor, Daniel P. Griswold, Augustus Fielding, Arthur L. Shipman, and Arthur H. Gregory, who I am satisfied are eight of the individuals named in and who executed the foregoing certificate, and the contents thereof being by me first made known to them, they severally acknowledged to me that they had signed, sealed, and delivered said instrument as their voluntary act and deed.

In witness whereof I have hereunto set my hand and official seal at the city of New York, in the county and State aforesaid, this eighth day of July, one thousand eight hundred and ninety.

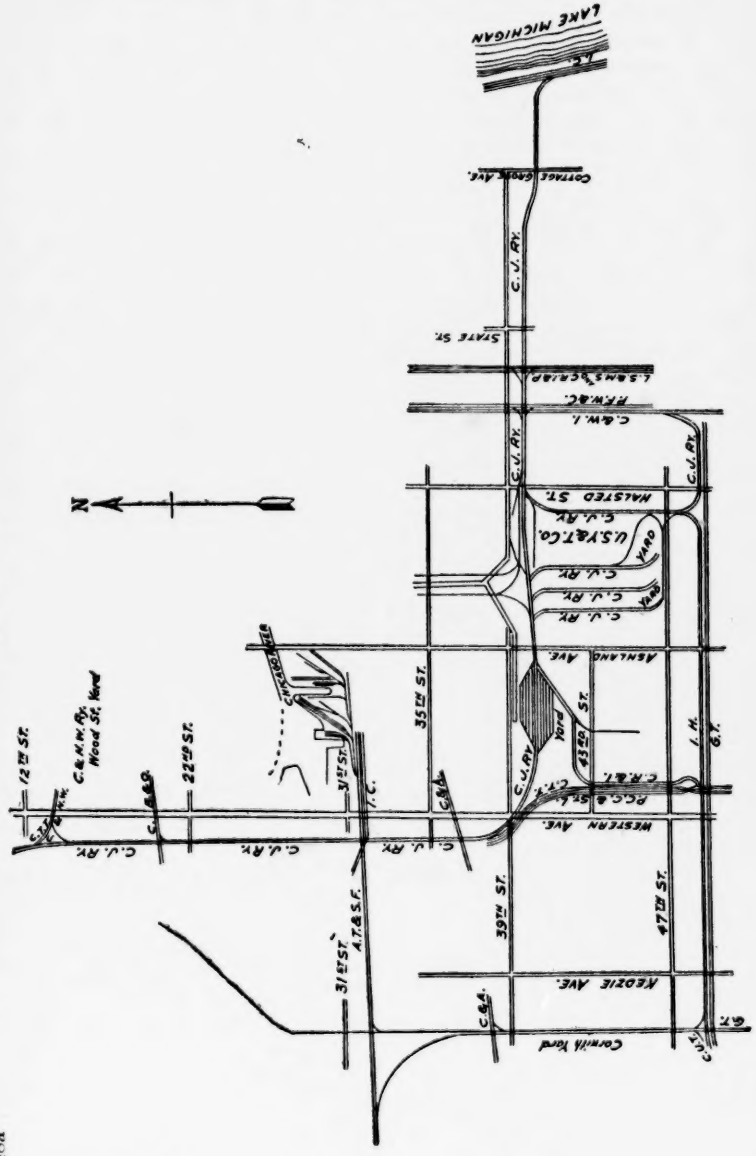
[SEAL.] JOSEPH B. BRAMAN,
Commissioner of Deeds for the State of New Jersey, in and for the State of New York, resident in said City of New York.

48 STATE OF NEW JERSEY,
County of Camden, ss:

Be it remembered that on this eighth day of July, eighteen hundred and ninety, before me, Benjamin D. Shreve, a master in chancery of New Jersey, duly authorized to take acknowledgments, personally appeared William J. Sewell, who I am satisfied is one of the persons named in and who executed the foregoing certificate, and I having first made known to him the contents thereof, he did acknowledge to me that he had signed, sealed, and delivered the same as his voluntary act and deed.

BENJAMIN D. SHREVE, M. C. C.

EXHIBIT "C."



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49 EXHIBIT D.

An agreement, made and concluded this fifteenth (15th) day of December, A. D. 1897, by and between the Union Stock Yard and Transit Company of Chicago (hereinafter for convenience called the "Yards"), party of the first part, and the Chicago and Indiana State Line Railway Company (hereinafter for convenience called the "Railroad"), party of the second part, bears witness:

Whereas the parties hereto are severally corporations created and existing under and by virtue of the laws of the State of Illinois and are severally possessed of lines of railroad, and have power under the laws of the State of Illinois, the Yards to grant and demise its right of way, line of railroad, and railroad tracks, and the Railroad the same to take and operate:

And whereas at a meeting of the board of directors of the Yards held on the fourteenth (14th) day of December, A. D. 1897, it was resolved to enter into, execute, and deliver a certain agreement of demise and lease of its line of railroad and railroad tracks unto the Railroad, being this instrument, and thereafter the board of directors of the Railroad, at a meeting called and held on the seventeenth (17th) day of December, A. D. 1897, resolved to take and accept said lease and demise upon the terms and conditions of said grant and the undertakings, covenants, and agreements therein expressed to keep and perform:

And whereas the Railroad has entered into negotiations with the Chicago, Hammond and Western Railroad Company for consolidation with said company or for the acquisition of all and singular the line of railroad, tracks, yards, cars, locomotives, tools, machinery, and other instrumentalities of said Chicago, Hammond and Western Railroad Company, with the purpose and object of extending, by the acquisition thereof, the lines of railroad of the said Chicago and Indiana State Line Railroad Company. Said Chicago, Hammond and Western Railroad Company will hereafter be referred to as the "Chicago Company":

And whereas the acquisition by the Railroad of the railroad tracks and property by this instrument demised, and of the line of railroad property and facilities of the Chicago Company to be acquired by the Railroad, by consolidation or otherwise, and the performance by the Railroad of the covenants in this instrument contained by it to
50 be kept and performed, to enable trains easily and conveniently to approach the stock and cattle yards and appurtenances of the Yards, will enhance the facilities of the public for doing business at the plant of the Yards, and will the better secure to the Yards its business and prompt handling and dispatch of the same:

Now, therefore, in consideration of the premises and one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, and of the mutual covenants, undertakings, and agreements hereinafter recited, by each of the parties hereto severally to be kept and performed, it is hereby mutually covenanted and agreed as follows:

ARTICLE 1. The Yards does hereby grant, demise, and lease unto the Railroad, for the term of fifty years next ensuing after the date hereof, the line of railroad and railroad tracks of the yards, extending from its connection with the tracks of the Illinois Central Railroad Company at or near the shore of Lake Michigan and Forty-third Street, in the city of Chicago, and thence in a general westerly and northerly direction to its terminus in section 19, township 39 N., R. 14 east of the third principal meridian, in the city of Chicago, together with all side tracks, industrial tracks, switches, turnouts, crossovers, appurtenances, railroad yards, yard tracks, storage yards and tracks, repair tracks, roundhouse tracks, machine-shop tracks, and generally all and singular the right of way, railroad and railroad tracks and appurtenances of the yards wherever situate and for what purpose soever the same are used and however held or possessed.

Also, all and singular the roundhouse, repair shops, machine shops, coal chutes, signal houses, telegraph offices, storage houses and places, and the lands upon which the same are built or now used and maintained thereon or held therefor, situate in the city of Chicago, and being generally all those buildings, erections, ways, and places now or heretofore used by the Yards in carrying on and conducting its railroad business or held therefor.

Also, all and singular the locomotives, cars, hand cars, tools, machinery, fixed and movable, and all and singular all other instrumentalities now and prior to the execution and delivery of this instrument used by the Yards in operating or carrying on and conducting its railroad business; also, the telegraph line or lines, poles, wires, instruments, and appurtenances now owned, possessed, or used by the Yards in carrying on and conducting its railroad business, with the right to enlarge and extend the same, and, so far as may be necessary, convenient or proper, to erect upon the lands of the Yards additional poles, wires, and other instrumentalities necessary or useful in and about the maintenance and operation of the telegraph line or lines of said railroad.

51 Also, the right to lay down, maintain, and operate upon the lands of the Yards additional side tracks, switch tracks, industrial tracks, switches, connections, cross-overs, and appurtenances thereof, necessary to reach industrial plants now or hereafter erected; with the right to rearrange, remove, and replace existing yards, side tracks, switch tracks, industrial tracks, switches, connections, and cross-overs, and the same to change, alter, and renew at pleasure, and the right to erect such depots and stations as may be reasonable and necessary:

Together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, with the right, power, and authority solely in the Railroad to operate cars, engines, and trains upon, over, and along the railroad tracks and facilities by this instrument demised, and thereon to pursue the business of a common carrier at and for such tolls, rates, charges, and revenues as the Rail-

road may from time to time impose, collect, and receive: provided, however, the same shall be reasonable.

To have and to hold the above-described premises and property, with the rights, privileges, easements, and appurtenances thereunto attaching and belonging, unto the Railroad for and during the period and term aforesaid; the Railroad yielding and paying therefor unto the Yards the rental hereinafter provided, and faithfully complying with all and singular the terms and conditions upon which the demise herein contained is made.

ARTICLE II. The Yards does hereby assign, transfer, and set over unto the Railroad all its right, title, and interest in and to all and singular the agreements, contracts, or undertakings now existing, providing for or covering the matter of transportation of products or the switching or transferring of cars; also all leases, agreements, or writings in and by which, or upon the terms of which, it holds any part or portion of its right of way or railroad tracks and appurtenances.

ARTICLE III. The grant in this instrument contained is upon the following express conditions:

(a) That the Railroad will, at its own sole cost and expense, keep and maintain the premises and property by this instrument demised in as good order and condition as the same are at the delivery of this instrument, and the same from time to time will renew, repair, and replace, and on the termination of this instrument, however the same may be terminated, will deliver said premises and property to the Yards in as good order and condition as when received, ordinary wear and tear excepted.

(b) That the Railroad will in due season, and as the same become due, pay all taxes and assessments levied, assessed, or imposed by state, city, or other municipal authority, or by the Government of the United States, upon the right of way, railroad, railroad tracks, and all and singular the premises and property by this instru-
52 ment demised, or upon the traffic or business conducted thereon, or upon the income derived from the operation thereof, and hold the Yards forever harmless against the same.

(c) That the Railroad will conduct, operate, and manage, at its own sole cost and expense, the premises and property by this instrument demised in a proper and economical manner, and in such way as to enable trains easily and conveniently to approach the stock and cattle yards and appurtenances of the Yards, and as will secure the prompt handling and dispatch of all business that may be offered upon said line of railroad and appurtenances, or consigned to or from said Yards, and will at all times hold itself in readiness to meet the demands of business offering to, or passing upon, over, and along the said demised tracks or contiguous thereto.

(d) That the Railroad will at the times and in the manner hereinafter mentioned promptly pay the rental by this instrument reserved to be by the Railroad paid to the Yards.

(e) That the Railroad will at all times hold itself in readiness to do, and will do and perform, the duties pertaining to a railroad, or of a railroad character, imposed upon or required by its charter or act of incorporation to be done and performed by the Yards.

ARTICLE IV. The rental to be paid by the Railroad for the premises and property by this instrument demised shall be two-thirds of the entire net earnings and revenue, as hereinafter specified, for the full term of the demise herein contained, derived by the Railroad from the operation of all its lines of railroad and railroad track, now owned or hereafter acquired, including the lines and railroad of said Chicago Company. Said rental shall be payable on demand of the Yards from time to time made, and to that end the Railroad will, on demand of the Yards, submit for examination to the nominee of the Yards its books, papers, vouchers, and documents showing in full and in detail its operations, and will on demand, from time to time, pay over to the Yards all such net earnings or revenue as it may have on hand after paying the cost of operation aforesaid, and deducting or paying the fixed charges upon the lines of railroad of the party of the second part due or accrued at the time of such demand.

ARTICLE V. The Railroad covenants and agrees to take the premises and property in this lease described, for the term and upon the conditions herein expressed, and the same to operate and conduct in the manner above in Article III described, at its own sole cost and expense, and the rental herein reserved to pay or cause to be paid at the times and in the manner in Article IV mentioned and described: further, to operate and conduct said line of railroad in a proper, thorough, and economical manner: to pay all taxes, assessments, and impositions levied, assessed, or imposed by states, city, or other municipal authority, or by the Government of the United
53 States, upon the premises and property in this instrument demised or upon its traffic, business, or income: to accept assignment and transfer of the agreements, contracts, and undertakings in Article II prescribed, and the same to complete, carry out, and perform as in and by said agreements, contracts, and undertakings the Yards has covenanted and agreed: to conduct, manage, and operate the line of railroad of the Chicago company, if the same shall be acquired by it, in connection with and as an extension of its railroad, and the railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to benefit, advantage, and behoof of the business and affairs of the Yards: and that it will maintain the premises and property by this instrument demised, and the same renew, replace, and repair, and, at the expiration of this instrument, the same will deliver and return to the Yards in as good order and condition as when received, ordinary wear and tear excepted.

ARTICLE VI. In arriving at the net earnings and revenue of the Railroad derived from the operation of its railroads and property there shall be deducted from the gross earnings of the Railroad:

(1) The actual cost of materials, supplies, and labor in maintaining, renewing, replacing, repairing, extending, and operating the railroads and property of the Railroad.

(2) The taxes and assessments paid by the Railroad.

(3) Fixed charges upon the lines of railroad and rolling stock of the party of the second part hereto, including interest payable or to become payable on the mortgage bonds of the Chicago company.

(4) Actual cost of equipment, including moneys due on the locomotives of the Yards herein demised, or of the Chicago company.

(5) Cost of extraordinary improvements or betterments upon the lines of the Railroad, required to be made by State or municipal authority.

(6) All other necessary expenses incurred in operating the lines of the Railroad consistent with the efficient operation of the same, it being the intention hereof that the Yards shall receive as rental hereunder the actual two-thirds of the entire net earnings and revenue of the Railroad to the same extent as if the Yards was the owner of the railway lines of the Railroad and all extensions thereof.

In determining the cost of maintenance and operation of the lines of railroad of the party of the second part hereto and of the amount of the fixed charges thereon all facts and information relative thereto, in addition to what is shown by the books of account and vouchers above provided for, shall always on demand be furnished and supplied freely and fully to the Yards. To that end the Railroad covenants and agrees that it will, during the term herein demised, keep accurate and true accounts of all its receipts and expenditures and upon whatever account the same were received or disbursed by
54 it, all of which shall always be subject to inspection by the Yards, or its nominee.

ARTICLE VII. The Railroad covenants and agrees that if it shall at any time hereafter during the existence of this lease or demise fail or omit to pay the rent herein reserved, or any part of said rent when the same should be paid as herein provided, or shall fail or omit to keep and perform all the covenants and agreements herein contained by it to be kept and performed, or any of them, and shall continue in such default for the period of ninety days, then and in either and every such case, it shall be lawful for the Yards at its option to enter into and upon the premises and appurtenances demised and every part thereof as to which such default exists and remove all persons therefrom without let or hindrance by the Railroad; thenceforth the said demised premises and property and all additions and improvements which shall have been made to the same to have, hold, possess, and enjoy as in the first and former estate of the Yards in the said premises and property, with the right to collect the rentals then due; or may take such other and further action for the enforcement of the provisions of this agreement as to the said Yards may seem advisable, and the Railroad to expel and put out, using such force as may be necessary; but all remedies, whether at

law or in equity, or by this instrument reserved, to be always construed as being cumulative, and no one remedy as a bar upon, or to the exercise of, any other remedy.

ARTICLE. VIII. The Railroad will pay and discharge all claims, demands, rights, suit, or suits, the liability for which shall accrue or become fixed and determined from and after the date of this instrument, and forever hold the Yards harmless from and against the same; and the Yards will pay, discharge, and assume all claims, demands, rights, suit, or suits, the liability for which shall accrue or become fixed and determined prior to the date of this instrument, and forever hold the Railroad harmless from and against the same. This covenant, on behalf of the Railroad, shall extend to, and comprehend, any claim or demand, judgment or decrees, loss or expense, incurred by the Yards because of any law or statute of the State of Illinois making liable the lessor or owner of the track on which the liability may accrue.

ARTICLE. IX. The Railroad will from time to time release to the Yards any of the property or premises by this instrument demised not necessary to the Railroad in the operation of the premises and property by this instrument to it demised.

ARTICLE X. This agreement shall inure to the benefit of and be binding upon the successors, assigns, purchasers, sublessees, and licensees of the parties hereto, and the provisions herein shall always and irrevocably be held to be covenants, running with the land
55 and to bind all persons, firms, and corporations taking the premises herein described, or any part thereof, by, through, or under the parties hereto, or either of them.

In witness whereof the parties hereto have caused these presents to be executed by their respective presidents and their corporate seals to be hereunto attached, attested by their respective secretaries, the action of said presidents severally being thereto duly authorized by the several boards of directors of the parties hereto the day and year first above written.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO.

By N. THAYER, *President.*

[Union Stock Yard & Transit Co., of Chicago.]

Attest:

J. C. DENISON, *Secretary.*

CHICAGO AND INDIANA STATE LINE RAILWAY COMPANY,

By J. A. SPOOR, *President.*

[Chicago & Indiana State Line Railway Co. Seal.]

Attest:

JAMES MILES, *Secretary.*

56 EXHIBIT E.

An agreement made and entered into this —— day of ——, one thousand nine hundred and nine, by and between the Union Stock Yard and Transit Company of Chicago, a corporation of the

State of Illinois, as party of the first part, and Louis Pfaelzer, David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, all of the city of Chicago, State of Illinois, partners under the copartnership name and style of Louis Pfaelzer & Sons, as parties of the second part.

Whereas the Union Stock Yard and Transit Company of Chicago, party of the first part (hereinafter called the "Stockyards Company"), was organized and incorporated in the year 1865 under the laws of the state of Illinois with power to locate, construct, and maintain, at or in proximity to the city of Chicago, yards, inclosures, building, railway lines, etc., for the conduct and accommodation of the business of a general union stock yard for cattle and other live stock, and now has a capital stock issued and outstanding of the par value of thirteen million two hundred thousand dollars ($13,200,000), consisting of one hundred and thirty-two thousand shares of the par value of one hundred dollars ($100) each, and has constructed and for many years maintained in said city of Chicago large and extensive yards, buildings, railway tracks, and plant necessary for the conduct of the business of a general union stock yards for cattle and other live stock, and said stock yards is now and for many years has been the largest live stock market in the world, and the largest number of cattle and other live stock are consigned to and bought, sold, or reshipped at said yards; and

Whereas the property of said Stock Yards Company is of great value and its business produces great revenue, income, and profits, which are principally derived from yardage and charges for or tolls on cattle and other live stock shipped and consigned to said yards and sold and bought there, and from charges for feeding, watering, and caring for such live stock; and

Whereas the numerous slaughtering, packing, and canning plants and establishments have been located and are carrying on business on property in the immediate neighborhood or contiguous to said stock yards, and the proprietors and managers of said plants and establishments have for many years bought and still buy more than

57 ——— per centum of all the cattle and other live stock consigned to and sold at said stock yards, and the location of other and additional slaughtering, packing, and canning plants and establishments on property also adjacent or contiguous to said stock yards will increase the demand and market at said yards and tend to protect, preserve, and increase the business, income, and profits of said Stock Yards Company; and

Whereas it is impracticable for any stock yards in the United States, under modern conditions of carrying on the business, to create and maintain any permanent and stable demand and market for cattle and other live stock, or to furnish, afford, and secure to shippers a continuous demand and market unless by and through the existence and maintenance of extensive slaughtering, packing, and canning plants and establishments in the immediate neighborhood of such stock yards; and

Whereas the parties of the second part, as copartners under the said firm name and style of Louis Pfaelzer & Sons, have been and are now engaged in the business of slaughtering cattle and other live stock on certain leased property situated on ——— ——— in said city of Chicago, and the lease of such premises will expire on the 30th day of April, 1911, and in contemplation and anticipation of the expiration of said lease they propose and intend to erect a new slaughtering, packing, and canning plant and establishment either at Chicago or at Kansas City, Kansas and Missouri, and the party of the first part has solicited and desires to induce said parties of the second part permanently to remain at Chicago and abandon any proposed plan of removing to said Kansas City, and to construct a slaughtering, packing, and canning establishment upon premises adjacent or contiguous to said Chicago stock yards with a daily slaughtering capacity greatly in excess of the present facilities of the parties of the second part:

Now, this agreement witnesseth that the parties hereto, for and in consideration of the premises and of the agreements and covenants hereinafter set forth, have agreed and covenanted, and hereby do agree and covenant, with each other as follows:

First. The party of the first part hereto hereby offers, agrees, and covenants to contribute to the parties of the second part or upon their order the sum of fifty thousand dollars ($50,000) towards the construction of a modern slaughtering, packing, and canning plant at Chicago and adjacent to said stock yards, subject to the terms and conditions and to be paid, used, and applied as hereinafter recited.

Second. The said parties of the second part accept said offer to contribute fifty thousand dollars ($50,000), and in consideration thereof agree and covenant to build, at Chicago, as soon as practicable, upon the lands described below, a modern slaughtering, packing, and canning plant and establishment having a killing capacity per day of at least two hundred and fifty cattle, two hundred
58 and fifty hogs, and one hundred and fifty sheep, such lands being described as follows:

Lots twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32) in the subdivision of block 4 of the superior court partition of the west half of section 4, township 38 north, of range 14 east of the third principal meridian.

The buildings, machinery, and fixtures of said slaughtering and packing plant so to be erected on said premises by the parties of the second part are to cost them not less than one hunderd and twenty-five thousand dollars ($125,000), exclusive of the cost or value of the land or other improvements, and the architect's plans for such plant are to be submitted to and approved in writing, before the commencement of construction, by John A. Spoor, of the city of Chicago, as president of the party of the first part. If said slaughtering, packing, and canning plant be thereupon constructed substantially in accordance with the architect's plans so submitted to

and approved by said Spoor, then and in that event the condition of this agreement as to the killing capacity per day of said plant shall be deemed to have been duly complied with to all intents and purposes.

Third. The said sum of fifty thousand dollars ($50,000) so to be contributed by the party of the first part to the parties of the second part towards such construction shall be paid as follows, viz: One-half thereof, or twenty-five thousand dollars ($25,000), when at least fifty thousand dollars ($50,000) of work shall have been done on buildings, machinery, and fixtures of said plant, to be determined by the certificate or certificates to that effect of the architect employed by the parties of the second part, and the remaining half thereof when fifty thousand dollars ($50,000) of additional work shall have been done on said buildings, machinery, and fixtures, to be likewise determined by said architect's certificate or certificates.

Fourth. The parties of the second part agree and covenant that they and their successor or successors shall, for and during the period of fifteen years from the date of the completion of said plant, conduct a general slaughtering, packing, and canning house business on said premises, and that all cattle and other live stock slaughtered or packed by them in or about said city of Chicago, or within two hundred miles thereof, shall be bought at said Chicago stock yards, but if not bought there, that such cattle and other live stock shall pass through and use said yards and pay the customary yardage, tolls, and charges thereon, or that they will pay or cause to be paid to the party of the first part full tolls and charges thereon, as fully, to all intents and pu'poses, as if such live stock were sent to said stock yard for sale and there bought by the parties of the
59 second part. Said parties of the second part further agree and covenant that during said period the conduct of their said business of slaughtering and packing shall be continuous unless interrupted by strikes, fires, cyclones, or other causes beyond their control, and that, if so interrupted, they will at their own proper cost and expense remove the cause of interruption as soon as practicable by repairing, rebuilding, or other means, so as promptly to resume business as before the interruption.

Fifth. The said parties of the second part hereby further covenant and agree as follows: That for and during said period of fifteen years they will conduct all their slaughtering, packing, and canning business on said premises adjoining the stock yards and any adjacent additions or extensions; that they will not build, erect, or construct any slaughtering, packing, or canning plant or establishment in any other city or State; that they will not organize or cause to be organized or promote the organization of any corporation for the purpose of constructing any slaughtering, packing, or canning plant in any other city or State, or in any other place in the city of Chicago or State of Illinois; that they will not, directly or indirectly, organize or cause to be organized or promote the organization of any stock yards other than said Chicago Stock Yards, and that they will not be or

become interested, directly or indirectly, as stockholders, bondholders, or otherwise, in any slaughtering, packing, or canning company located in the vicinity of any other stock yards than the Chicago Stock Yards or in any company owning or operating yards other than said party of the first part; but nothing herein contained shall be construed as preventing said second parties from organizing a corporation for the purpose of taking over the business now conducted and hereafter to be conducted by them upon the premises hereinabove described of said Louis Pfaelzer & Sons, or any adjacent extensions or additions. In the event said second parties shall cause a corporation to be organized for the purpose of taking over and operating the business now conducted and to be conducted on the premises herein described by said Louis Pfaelzer & Sons, they jointly and severally covenant and agree that said corporation will faithfully maintain and carry out each, every, and all of the agreements made in this contract by said second parties and will duly enter into a contract to that effect for the then unexpired period of said term of years.

Sixth. This contract shall enure to the benefit of and be binding upon not only the parties hereto, but their successors and assigns, and the parties of the second part agree and covenant, jointly and severally, as fully as if each separate agreement and covenant so provided.

Seventh. The parties hereto further agree and covenant that they will do or cause to be done or execute or cause to be executed any and all such further acts, deeds, and instruments as may be necessary for the more effectively carrying out this agreement according to its true intent and purpose, and as may be reasonably advised or required by the parties hereto or their respective counsel.

In witness whereof the parties hereto have caused this agreement to be executed the day and year first above written.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO,

By ——— ———.

LOUIS PFAELZER & SONS.

Attest:

——— ———.

For value received at or before the execution and delivery of the within contract, The Chicago Junction Railways and Union Stock Yards Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, hereby guarantees the faithful performance by the Union Stock Yard and Transit Company of Chicago of each, every, and all of the conditions imposed upon it under and by virtue of the terms of the annexed contract.

In witness whereof the said The Chicago Junction Railways and Union Stock Yards Company has caused this instrument to be exe-

cuted by its president, attested by its secretary, and its corporate seal to be hereunto affixed at Chicago, this —— day of ———, 19—.

THE CHICAGO JUNCTION RAILWAYS AND
UNION STOCK YARDS COMPANY.

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

61 *Chancery subpœna.*

Issued, returned, & filed June 21, 1910.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The United States of America to Union Stock Yard and Transit Company of Chicago, a corporation; the Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, greeting:

We command you and every of you, that you appear before our judges of our Circuit Court of the United States of America for the Northern District of Illinois, at Chicago, in the eastern division of said district, on the first Monday in the month of July next, to answer the bill of complaint of the United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois, to execute:

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this thirteenth day of June, in the year of our Lord one thousand nine hundred and ten and of our independence the 134th year.

JOHN H. R. JAMAR, *Clerk.*

(Seal of the United States Circuit Court, Northern District of Illinois.)

62 *Memorandum.*

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago, aforesaid, on or before the day to which this writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

JOHN H. R. JAMAR, *Clerk.*

(Endorsed): Original. General, No. 30041. Marshal's No. 8815. Circuit Court of the United States, Northern District of Illinois. Chancery subpœna. Returnable to rule day, first Monday in July, A. D. 1910. John H. R. Jamar, clerk.

I served this writ within my district in the following manner, to wit, upon the Union Stock Yard and Transit Company of Chicago, a corporation, by reading and delivering a true copy to A. G. Leonard, vice president of said corporation. I was unable to find the president of said corporation.

This 14th day of June, 1910, at Chicago, Illinois, upon the Chicago Junction Railway Company, a corporation, by serving R. Fitzgerald, vice president of said corporation, and at the same time delivering to him a true copy thereof. I was unable to find the president of said corporation.

This 14th day of June, 1910, at Chicago, Illinois, upon David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer
63 and Sons, and at the same time delivering to each a true copy thereof.

This 14th day of June, 1910, at Chicago, Illinois, I was unable to find The Chicago Junction Railways and Union Stock Yards Company, a corporation, within my district. I return this unexecuted by order of district attorney this 20th day of June, 1910.

LUMAN T. HOY, *U. S. Marshal*,
By E. R. DAVIS, *Dpty.*

5 services,	10.00
6 miles	.36
	$10.36

64 *Appearance of David Pfaelzer et al.*

Filed June 29, 1910.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division.

In the United States Circuit Court.

THE UNITED STATES OF AMERICA
vs.
UNION STOCK YARDS & TRANSIT COMPANY OF CHICAGO et al. } Gen. #30041.

We hereby enter the appearance of David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, copartners doing business under the firm name and style of Louis Pfaelzer & Sons, and of ourselves as their solicitors.

McEWEN, WEISSENBACH, SHRIMSKI & MELOAN.

Chicago, June 29/10.

65 *Appearance of Chicago Junction Railways and Union Stock Yards Company.*

Filed July 1, 1910.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainants,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation: The Chicago Junction Railway Company, a corporation: The Chicago Junction Railways and Union Stock Yards Company, a corporation: and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. | In equity.

We hereby enter the appearance in the above-entitled cause of the Chicago Junction Railways and Union Stock Yards Company, a corporation, and that of ourselves as its solicitors, reserving the usual time within which to plead, answer, or demur.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for defendant the Chicago Junction Railways and Union Stock Yards Company 44 Wall Street, New York City.
WILLIAM D. GUTHRIE,
Of Counsel.

66 *Appearance of Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railway Company.*

Filed July 1, 1910.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainants,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation: The Chicago Junction Railway Company, a corporation: The Chicago Junction Railways and Union Stock Yards Company, a corporation: and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. | In equity.

We hereby enter the appearance in the above-entitled cause of the Union Stock Yard & Transit Company of Chicago, a corporation, and of the Chicago Junction Railway Company, a corporation, and

that of ourselves as their solicitors, hereby reserving the usual time within which to plead, answer, or demur.

WINSTON, PAYNE, STRAWN & SHAW,
Solicitors for defendants Union Stock Yard & Transit Company of Chicago and the Chicago Junction Railway Company.

———— ————,
Of Counsel.

67 *Answer of Union Stock Yard and Transit Company of Chicago.*

Filed July 28, 1910.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainant.
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation: The Chicago Junction Railway Company, a corporation: The Chicago Junction Railways and Union Stock Yards Company, a corporation: and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. | No. 30041.

The answer of Union Stock Yard and Transit Company of Chicago, hereinafter called the "Stock Yard Company," one of the defendants in the above-entitled cause.

This defendant, saving and reserving unto itself any and all manner of benefit of exception to the many errors and inconsistencies in the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as this defendant is advised it is necessary or material for it to make answer unto, answering says:

68 This defendant admits that the bill of complaint in this cause of the United States was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

This defendant admits that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

This defendant admits that it was organized and now exists as averred in Paragraph II of said bill of complaint, and that its principal place of business and principal operating office is in the city of

Chicago, within the northern district of the State of Illinois, and that it now has issued and outstanding 132,000 shares of stock of the par value of $100 each, and bonds and notes of the face value of $500,000.

III.

As to the averments of Paragraph III of said bill of complaint with respect to the organization of the Chicago Junction Railway Company this defendant says that it believes the same to be true, but it has no direct knowledge respecting the same and that it neither admits nor denies the same.

IV.

As to the averments of Paragraph IV of said bill of complaint with respect to the organization of the defendant the Chicago Junction Railways & Union Stock Yards Company, therein called "the
69 Investment Company," this defendant says that it is not advised respecting the same and that it neither admits or denies the same.

V.

This defendant admits each, every and all of the averments contained in Paragraph V of said bill of complaint.

VI.

This defendant admits each, every and all of the averments contained in Paragraph VI of said bill of complaint.

VII.

With respect to the averments in Paragraph VII of said bill of complaint, this defendant avers that the purposes of the organization of this defendant are fully set forth in its charter a copy of which is attached to said bill of complaint and is marked "Exhibit A," and reference is hereby made by this defendant to said "Exhibit A" for the purposes and powers of said defendant, and this defendant denies that it was organized for any purpose whatsoever except that disclosed by said "Exhibit A."

This defendants admits that after the passage of the act of February 13, 1865, it proceeded to purchase and acquire the real estate described in Paragraph VII of said bill of complaint, and also that it proceeded to construct and operate the hotel described in said Paragraph VII, and that it has continuously, from that time up to the present time, and is now operating, the said hotel.

This defendant also admits that it also constructed the
70 railroad tracks described in said Paragraph VII and the loading docks, chutes or platforms described in said Paragraph VII and that said "Exhibit C" attached to the said bill of

complaint correctly sets forth the tracks constructed, owned and acquired by this defendant.

This defendant admits that said tracks intersect or connect with substantially all the tracks of the said interstate carriers by railroad (called Trunk Line Carriers in said bill of complaint and hereinafter also called "Trunk Line Carriers") entering the city of Chicago, and that it is physically possible by means thereof for both live and dead freight coming to the stock yards to move on through bills of lading in an unbroken line of rail carriage from points outside of the State of Illinois to the said stock yards and industries located at the said stock yards, and this defendant admits that both live and dead freight does so move. This defendant admits that there have been located along said tracks private industries and that such industries do ship out freight over the lines of railroad hereinabove referred to destined to points beyond the State of Illinois, and that freight is so moved in an unbroken carriage on the railroad tracks originally constructed by this defendant on through bills of lading. But this defendant alleges that it does not issue said through bills of lading. It alleges that it does not issue any bills of lading; that it does not undertake to carry and does not carry said freight any part of the distance over which it moves. It alleges that it does not operate the tracks over which said freight moves, or any of them, and does not participate in the revenue derived from the carriage of said freight. The method by which the billing is issued and
71 handled upon which said freight moves is hereinafter more specifically set forth.

This defendant admits that live stock which is brought to the Chicago Stock Yards by trunk line carriers is delivered at the loading docks, chutes and platforms and is unloaded by the employes of the Stock Yard Company, and that for this unloading service the Stock Yard Company is paid by the trunk line carriers carrying the freight a specific sum per car for all the cars so unloaded, and this defendant admits that the specific sum so paid to it for such unloading service is not published or filed by it with the Interstate Commerce Commission in any tariff issued by it, or in any tariff in which it has concurred. This defendant avers that it is not advised as to whether or not such unloading charge is published or filed with the Interstate Commerce Commission by any trunk line carrier, but it believes that the averments of the bill of complaint in this behalf are true.

Further answering this defendant avers that ever since the organization of the yards the service of loading and unloading live stock is a service for which it has been paid by the trunk line carriers delivering live stock at the loading docks, chutes and platforms of the Stock Yard Company and that it is a service which it has rendered and does render at the request of the trunk line carriers, and as the result of a contract between it and said trunk line carriers providing for the payment therefor.

This defendant admits that the stock so unloaded as set forth in said bill of complaint is mostly stock consigned on through bills of lading, which has been transported by railroad from points outside of the State of Illinois to the stock yards, or to points on the
72 lines of railroad owned by the Stock Yard Company, but leased, as this defendant avers, to the Junction Company, but this defendant avers that said through bills of lading have been and are issued by the trunk line carriers; that this defendant does not participate in rates of said trunk line carriers or receive a division thereof.

This defendant admits that when live stock is outbound from the stock yards destined to points beyond the State of Illinois, the Stock Yard Company loads said stock through and over its loading docks, chutes and platforms, and that it is paid by the trunk line carriers a fixed sum per car for such services, and it admits that the sum so paid to it by said trunk line carriers for such service is not published or filed with the Interstate Commerce Commission in any tariff of this defendant, or in any tariff in which it has concurred. This defendant further answering says that it is not advised as to whether or not such charge has been published or filed with the Interstate Commerce Commission by any trunk line carrier, but it believes the averments of the bill of complaint in this behalf are true. This defendant further answering says that ever since the organization of the yards the trunk line carriers have paid to the Stock Yard Company a fixed sum for performing such service and that such service has been and is now rendered at the request of the trunk line carriers, and as the result of a contract between it and said trunk line carriers providing for the payment therefor.

This defendant admits that most of the stock loaded at the stock yards from the dealers thereof, moves therefrom on through bills of lading by railroad over the rails of the Stock Yard Company in connection with the trunk line carriers, to points beyond the State
73 of Illinois, but avers that said bills of lading are not issued by this defendant.

This defendant alleges that it does not issue bills of lading of any kind or character whatsoever; that it does not participate in the rates received by trunk line carriers from the transportation of freight; that it does not receive a division of any rates charged by trunk line carriers for the transportation of freight; that it is informed and believes and states the fact to be that no freight is moved over the rails owned by this defendant and leased by it to the Junction Company in the rates for the carriage of which either this defendant or this defendant's lessee (the Junction Company) participates or out of which it or its lessee (the Junction Company) receives any division or percentage. This defendant is informed and believes and so alleges that all bills of lading for freight which passes over the railroad tracks owned by this defendant and leased by it to the Junction Company are issued by trunk line carriers.

and that when such freight is moved over the rails leased by it as aforesaid, with the motive power of the trunk line carriers, that such trunk line carriers pay therefor a trackage charge to the Junction Company.

Further answering, this defendant admits that it is not in itself a dealer in cattle or live stock, but that it keeps and maintains a public market where all kinds of live stock are bought and sold. This defendant admits that as part of its stock yards business it feeds and waters stock in transit over the lines of the trunk line carriers, for which it is paid by the carrier or carriers handling the freight to and from the yards. It admits that its charge for such service is not published or filed by it in any tariff issued by it
74 with the Interstate Commerce Commission or in any tariff in which it has concurred; and it does not know whether such charge is published by any trunk line carrier or filed by any trunk line carrier with the Interstate Commerce Commission, but it believes that the averment of the bill of complaint in this respect is true.

Further this defendant alleges that it has never filed and has not now on file any tariffs of any kind with the Interstate Commerce Commission, and that it has never concurred and does not now concur in any tariffs filed by any other person, firm, or corporation with the Interstate Commerce Commission.

Further answering, this defendant avers that the service of feeding and watering live stock is a service for the feeding and watering of live stock in transit; that it does and always has performed such service for the trunk line carriers at the request of the trunk line carriers, and that it receives and always has received compensation therefor from the trunk line carriers; that it does not know and never has known or dealt with the shipper or consignee in the matter of its said charges.

This defendant avers that it is informed and believes and so alleges that said live stock so fed and watered in transit is brought to its feeding and watering sheds by the trunk line carriers over the rails of the Junction Company, for which, as this defendant believes and alleges, said trunk line carriers pay to the Junction Company a fixed sum per car irrespective of the origin or of the destination of the freight or of the amount of revenue received by the said trunk line carriers for the haul.

Further answering, this defendant admits that it frequently makes repairs to cattle cars as averred in said petition, and it admits
75 that the charges exacted by it therefor are not published or filed with the Interstate Commerce Commission in any tariff on file with said commission. This defendant avers that such charges in connection with the repair or alteration of equipment are charges which the trunk line carriers pay to the Stock Yard Company for services which they, the trunk line carriers, employ the Stock Yard Company to perform.

This defendant admits that it frequently feeds, beds, and waters live stock consigned to consignees at the stock yards, and for such

service makes a charge, for which it is paid by the consignee at the yards. It admits that the charges for such services and material are not filed by it in any tariff with the Interstate Commerce Commission.

This defendant admits that on December 15, 1897, it, pursuant to the powers conferred upon it by its charter, leased all of its said railroad to the State Line Company, as set forth in Paragraph VII of said bill of complaint, and that Exhibit D is a correct copy of said lease, and that under and by virtue of the terms of said lease it did not lease its loading docks, chutes, or platforms, or other loading or unloading facilities appurtenant to the stock yards; and it admits that it retained the control of the said facilities and always has continued and still continues to use the same in the manner and method herein pointed out and not otherwise.

VIII.

This defendant avers that it believes the allegations of said bill of complaint, as contained in Paragraph VIII thereof, with respect to the organization of the State Line Company and its consolidation with the Chicago, Hammond & Western Company, under the
76 name of the Chicago Junction Railway Company, to be true, and admits the same; that it also believes to be true the averments in said Paragraph VIII with respect to the sale by the Chicago Junction Railway Company to the East Chicago Belt Railroad Company and admits the same.

With respect to the averments of subdivision (a), subdivision (b), subdivision (c), subdivision (d), subdivision (e), and subdivision (f) of Paragraph VIII of said bill of complaint this defendant says that it is not advised with respect thereto and that it neither admits or denies the same.

This defendant admits each, every, and all of the averments of the said bill of complaint contained in subdivision (g) and subdivision (h) of Paragraph VIII thereof.

With respect to the averments contained in subdivision (i) and subdivision (j) of said Paragraph VIII of said bill of complaint this defendant says that it is not advised respecting the same and that it neither admits or denies the same.

This defendant admits each, every, and all of the averments contained in subdivision (k) of said Paragraph VIII, and with respect to the averments contained in said subdivision (k) touching the movements of certain freight on through bills of lading this defendant alleges that the said through bills of lading are not issued by it, and this defendant alleges that said through bills of lading are issued and handled in the same manner as the bills of lading hereinabove in this answer referred to and in no other way whatsoever.

With respect to the averments in subdivision (l) in Paragraph VIII of said bill of complaint touching the methods and manner in which the Junction Company handles freight, this defendant says
77 that it is not advised as to whether or not the same method and manner is now adopted by the Junction Company as was

formerly employed by this defendant prior to the time when it leased its line to the State Line Company, and it neither admits or denies the allegations of said subdivision (1) relating thereto.

IX.

Further answering this defendant admits each, every, and all of the averments contained in Paragraph IX of said petition, and with respect thereto alleges that it advances said charges to the trunk line carriers for the accommodation and convenience of its own patrons and customers, being the commission men and consignees buying and selling live stock at the stock yards; that the charges which it makes for loading and unloading live stock are paid separately by the trunk line carriers to it, and have nothing to do with the advances made by this defendant on behalf of said consignees and commission men to the trunk line carriers for freight charges due to such carriers for live stock consigned over the lines of such carriers to consignees thereof doing business at the stock yards. This defendant alleges that all bills of lading issued for the carriage of live stock from the stock yards are issued by the agents of the trunk line carriers to the consignors, and are not issued by the Stock Yard Company, or any of its employees.

X.

Further answering this defendant avers that it is not advised with respect to the publication of the tariffs of the Junction Com-
78 pany and it makes no answer with respect to the averments contained in Paragraph X of said bill of complaint relating thereto.

This defendant admits that the Stock Yard Company is the owner of the fee title to the railroad operated by the Junction Company, and that it owns some of the rolling stock now under the control and operation of the Junction Company under its lease of December 15, 1897, but this defendant denies that it is in fact the owner of a railroad engaged in the transportation of property by railroad from points in the various States and Territories of the United States and in the District of Columbia to points on its line of railroad in the State of Illinois, and denies that it is engaged in the transportation of property from points on its line of railroad in the State of Illinois to points in the various States and Territories and the District of Columbia. It admits that it does not file with the Interstate Commerce Commission any rates, schedules, or tariffs whatsoever, and it avers that it is not its duty to file with the Interstate Commerce Commission any rates, tariffs, or schedules whatsoever. It alleges that it is not engaged in transporting property between points on the road the fee title of which is owned by it and points on the line of any other carrier. It admits that it does not concur in the tariffs of any railroad. It alleges that it is not engaged in the transportation business. Further answering it admits that in a general way it has had

general knowledge of the methods adopted by the Junction Company in handling its business, but it avers it has had such knowledge only as a matter of general information, and not as a matter of right or power of control. It avers that until the investigation by the Interstate Commerce Commission of the methods of doing business
79 at the stock yards, which said investigation it avers was made on or about December, 1908, it did not know whether the Junction Company filed its tariffs with the Interstate Commerce Commission or not, and it alleges that it has no power under the lease from it to the said Junction Company to compel the said Junction Company to conduct its business or operate or use its tracks in any other or different way from that selected by the said Junction Company, or adopt any business methods other or different from those selected by the said Junction Company; that under and by virtue of the terms of the said demise no such power is conferred upon this defendant or reserved to it; and that the said Junction Company is a wholly separate and distinct corporation over which this defendant has no control whatsoever.

XI.

Further answering this defendant admits that the rental to be paid by the Junction Company to the Stock Yard Company is fully set forth in article 4 of said Exhibit D.

XII.

With respect to the averments contained in Paragraph XII of said bill of complaint touching the organization of the Chicago Junction Railways & Union Stock Yards Company, one of the defendants herein, this defendant says that it has no information and it neither admits nor denies the same, but this defendant admits that in the year 1890 said Chicago Junction Railways and Union Stock Yards Company acquired and became the owner of and is now the owner of over ninety (90) per cent of the capital stock of this defendant.

With respect to the averments in said Paragraph XII
80 touching the alleged ownership of said Chicago Junction Railways and Union Stock Yards Company of all of the capital stock of the Junction Company this defendant is not advised, makes no answer, and neither admits nor denies the same.

XIII.

Further answering this defendant admits that David Pfaelzer, Abe Pfaelzer and Jones L. Pfaelzer are engaged in the business of buying, slaughtering, and selling packing house products, under the firm name of Louis Pfaelzer & Son; that their present place of business is located in the city of Chicago, county of Cook and State of Illinois, in what is known as the stock yards district, in the

vicinity of the tracks operated by the Junction Company and the cattle pens of this defendant. That said Louis Pfaelzer & Sons in the prosecution of their business purchase live stock shipped by the owners of cattle and sold at the yards; that they slaughter such live stock so purchased at their said packing house; and that such live stock moves from its points of origin on through bills of lading to the consignees thereof at the stock yards district, but it alleges that said bills of lading are issued and handled, and that said live stock is transported in the method hereinabove pointed out in this answer, and in the answer of the Junction Company, and that it is done in no other way whatsoever. It admits that the packing house products manufactured by said Louis Pfaelzer & Sons are sold to consignees in and around Chicago, Illinois, and in other States, and it admits that such packing house products as are sold by said Louis Pfaelzer & Sons to persons in other States are moved and han-
81 dled in the manner that all freight is moved to and from said stock yards, and to and from the industrial plants located in said stock yards district, as set forth in this answer.

XIV.

This defendant admits that it has entered into that certain contract or agreement which is attached to said bill of complaint and marked Exhibit E, and it admits that said contract or agreement is now in process of performance, and that it will, unless restrained by this court, be carried out. It also admits that the performance of said contract or agreement on its part has been guaranteed by said Chicago Junction Railways and Union Stock Yards Company. Further answering it alleges that there are competitive stock yards established in many cities in the States of the United States, to wit, at Sioux City, Iowa, at Omaha, Nebraska, at Kansas City, Kansas, at St. Louis, Missouri, at East St. Louis, Illinois, at Fort Worth, Texas, and at various places in the State of Oklahoma; that all of said stock yards have built up and established their business in competition with that of this defendant by offering and giving inducements either in the shape of land or money to packing houses or other industries to locate at or near their said yards and that the presence of such industries in the immediate vicinity of stock yards is indispensable in order to insure successful operation and offer a stable and continuous demand and market for live stock.

Further answering this defendant alleges that said contract or agreement was entered into for the express purpose of maintaining the business of this defendant as a stock yards, and of increas-
82 ing the volume of said business and of protecting the business of this defendant in competition with other stock yards companies located in various parts of the United States.

It admits that the execution and performance of said contract will tend to increase the amount of interstate freight coming into and going out of the stock yards and moving over the lines of railroad

owned by this defendant and leased by it to the Junction Company. It believes that it will tend to increase the yardage to be collected by this defendant and that it may tend to increase the earnings of the Junction Company, and that it may thus tend to increase as the result thereof the rentals of this defendant from the use of its tracks, but it avers that all of such effects are merely incidental; and it denies that such payment will constitute a payment of money by the owner of a railroad and a common carrier engaged in the transportation of property between points in the various States to a shipper of property transported between such points in the various States, whereby such shipper has his property transported in interstate commerce by railroad at less rates than are exacted by said common carrier or railroad from other persons moving property of similar character and description between the same points at the same time. It alleges that the payment provided for in said contract has nothing whatsoever to do with the transportation of property and the rates and charges therefor and no connection therewith.

Further answering this defendant denies that the payment of the said money to the said Louis Pfaelzer & Sons will be a rebate and an unlawful discrimination in violation of section 2 of the act to regulate commerce, and it denies that it will constitute a device
83 whereby an undue advantage will be given to and an unlawful discrimination will be practiced in favor of, the said Louis Pfaelzer & Sons by this defendant, and it denies that such payment will constitute a concession, rebate and an unlawful discrimination whereby the property of said Louis Pfaelzer & Sons is by a device transported in interstate commerce over the lines of railroad owned by the Stock Yard Company at a less charge than is exacted from other shippers for the same service, and it denies that such payment will constitute a violation of the act of Congress approved February 19, 1903, and as amended June 29, 1906, commonly known as the "Elkins law"; and it denies that it is subject to the jurisdiction of or is obliged and required to file with *with* the Interstate Commerce Commission reports and monthly statements provided for in section 20 of the act to regulate commerce.

Further answering, this defendant alleges that it claims the right to make like payments to the payments provided for in the Pfaelzer contract, otherwise known as Exhibit E to said bill of complaint, either in money or in property at any time for the purpose of protecting, maintaining and increasing its business and of establishing a new industry at or near the vicinity of the stock yards, or retaining an industry already established at or near said stock yards, in such amounts as in the judgment of the board of directors and officers of this defendant may be necessary to protect or further the interests of this defendant, and it alleges that said payment even if made to customers or patrons of said stock yards for the purpose of increasing the business at said stock yards, will not be in violation of any act of the Congress in such case made and provided.

84 XV.

With respect to the allegation contained in paragraph XV of said bill of complaint to the effect that said Chicago Junction Railways and Union Stock Yards Company controls the Junction Company this defendant has no knowledge and makes no answer, but this defendant admits that said Chicago Junction Railways and Union Stock Yards Company, through its ownership of the stock of this defendant company, may control the election of the directors of this defendant. This defendant denies that if said Investment Company entered into an independent contract with said Louis Pfaelzer & Sons that such contract would be made for and on behalf of this defendant.

XVI.

Further answering, the said defendant denies that the said complainant is entitled to the relief prayed for, or any part thereof as against this defendant, and so having answered said bill of complaint the said defendant prays to be hence dismissed with its costs in this behalf most grievously sustained. And this defendant will ever pray, etc.

UNION STOCK YARD & TRANSIT COMPANY OF CHICAGO,
By WINSTON, PAYNE, STRAWN & SHAW,
Its Solicitors.

RALPH M. SHAW,
Of Counsel.

85 *Answer of the Chicago Junction Railway Company.*

Filed July 28, 1910.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainant,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants. No. 30041.

The answer of the Chicago Junction Railway Company, hereinafter called the "Junction Company," one of the defendants in the above-entitled cause.

This defendant, saving and reserving unto itself any and all manner of benefit of exception to the many errors and inconsistencies in

the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as this defendant is advised it is necessary or material for it to make answer unto, answering, says: This defendant admits that the bill of complaint in this cause of the United States was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

86 I.

This defendant admits that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

As to the averments contained in Paragraph II of said bill of complaint with respect to the organization of the Union Stock Yard and Transit Company, hereinafter called the "Stock Yard Company," this defendant says it is not advised respecting the same, and that it neither admits or denies the same.

III.

This defendant admits each, every, and all of the averments contained in Paragraph III of said bill of complaint.

IV.

As to the averments contained in Paragraph IV of said bill of complaint with respect to the organization of the defendant Chicago Junction Railways Company and Union Stock Yard Company, therein called the "Investment Company," this defendant says that it is not advised respecting the same, and that it neither admits or denies the same.

V.

This defendant admits each, every, and all of the averments contained in Paragraph V of said bill of complaint.

87 VI.

This defendant admits each, every, and all of the averments contained in Paragraph VI of said bill of complaint.

VII.

With respect to the averments contained in Paragraph VII of said bill of complaint touching the organization of and the purposes of the organization of the Union Stock Yard Company, this defendant

avers that it is not advised respecting the same, and that it neither admits or denies the same.

With respect to the averments contained in said Paragraph VII, this defendant alleges that the through bills of lading mentioned therein are not issued by this defendant on either inbound or outbound live or dead freight; that said through bills of lading are issued by trunk-line carriers which carry the freight; that, with respect to live stock, the said trunk-line carriers have trackage rights over the lines of this defendant, as will be hereinafter more fully set forth, and that they pay for such trackage rights a fixed and specific sum, which is irrespective of the origin of the freight or of the character of the freight or of the length of the haul.

Touching the lease from the Stock Yard Company to the Chicago & Indiana State Line Railroad Company, this defendant admits that Exhibit D, attached to said bill of complaint, is a correct copy of said lease.

As to the other averments contained in said Paragraph VII of said bill of complaint not hereinbefore answered in this paragraph
88 of this answer, this defendant says that it is not advised respecting the same and that it neither admits or denies the same.

VIII.

This defendant admits the averments of said bill of complaint in Paragraph VIII thereof with respect to the organization of the State Line Company, its consolidation with the Chicago, Hammond & Western Railroad Company under the name of the Chicago Junction Railway Company, and its ownership and operation of the line of railroad from Franklin Park on the northwest to the city of Hammond, Indiana. It also admits the averments of said bill of complaint with respect to the sale by the Junction Company on November 1, 1907, of that portion of its railroad running from Franklin Park on the northwest to Hammond and Whiting, Indiana. It also admits that the Junction Company does not now own or operate any tracks of railroad except those operated by it under the lease aforesaid, which said tracks are shown on said Exhibit C. It admits that all of said tracks and lines now operated by it are shown on said Exhibit C. It also admits that all of said tracks and lines now operated by it are owned by said Stock Yard Company, subject, however, to the terms of said lease. This defendant admits the averments of the said bill of complaint with respect to the location of its said tracks and the mileage thereof, and it also admits that all of said industries so served by it are located at or near the stock yards in the city of Chicago, county of Cook, and State of Illinois.

This defendant admits all of the averments in subdivision (a) in Paragraph VIII of said bill of complaint, and, further answer-
89 ing, it alleges that the several trunk-line carriers therein referred to have trackage rights over the rails of the Junction Company and that the defendant, the Junction Company, is paid by

said trunk-line carriers running their trains over the tracks of the Junction Company for the purpose of connecting eastern and western trunk lines a fixed sum per car for each car moved by said trunk-line carrier over the tracks of the Junction Company, and that it receives this fixed sum regardless of the character of the commodity contained in such cars, or where the same is received, or its point of destination, or the amount of revenue derived by the trunk line from the haul, and has and receives no interest in the through rate charged by any trunk-line carrier.

This defendant admits each, every, and all of the averments of said bill of complaint contained in subdivision (b) of Paragraph VIII thereof, and with respect to these allegations said defendant avers that the carloads of dead freight referred to in said subdivision (b) of Paragraph VIII always move on through bills of lading issued by the trunk-line carriers; that this defendant does not issue or handle these bills of lading and has no negotiations with the consignor or the consignee of such freight. The service performed by it is a switching service. For this service in making the switch from the receiving tracks to other points on these tracks, this defendant receives a fixed switching charge, which is paid to it by the trunk-line carrier, regardless of the character of the commodity in the car, or of its origin, or its destination, or of the amount of the revenue received from the haul by the trunk-line carrier. The trunk-line carrier in each instance absorbs this switching charge made by this defendant.

When this defendant receives the car upon the receiving track
90 from the trunk-line carrier, it gives to the trunk-line carrier a receipt showing that it has received the car. All of the trunk-line carriers have agents in the stock-yards district who attend to the collection of freight charges on inbound freight, except as hereinafter set forth, and to the ordering of cars wanted by shippers for outbound freight, and to the issuance of bills of lading on such shipments, and to such negotiations as may arise between the consignee and the carrier with respect to the surrender of bills of lading for inbound freight or other matters. When a car is received by this defendant at the receiving track and is delivered by this defendant to its destination on its rails, this defendant deals solely with the trunk-line carriers. When cars are delivered for outbound freight by this defendant to shippers in the stock-yards district, the consignors or shippers pay the charges for the entire movement to the trunk-line carriers, or their agents stationed at the yards. This defendant does not negotiate with shippers or consignees respecting either incoming or outgoing freight. This defendant avers that the foregoing facts apply to each, every, and all of the shipments of inbound freight or outbound freight to or from the stock-yards district, or to or from any industries located thereat along the lines of the Junction Company.

Further answering this defendant admits the averments of the bill of complaint contained in subdivision (c) in Paragraph VIII, and with respect to these allegations this defendant company alleges that when any shippers located in the stock-yards district wish cars for

loading outbound either dead or live freight, the car is placed at the loading docks or platform of the shipper by this defendant,
91 not at the request of the shipper but upon an order received by this defendant from a trunk-line carrier. For the service which this defendant performs in moving with its own motive power such cars to the receiving tracks of the trunk-line carrier, the trunk-line carriers pay this defendant a switching charge which the trunk-line carriers absorb in each instance. This defendant issues no bill of lading with respect to this outbound freight, but such billing is issued by the agents of the trunk-line carriers stationed at the yards. Each of the trunk-line carriers have agents located at or near the stock-yards district for this purpose, and such negotiations if any, as take place between the shippers and the carrier occur between the agents of the trunk-line carriers and the shippers. The compensation which this defendant gets for its switching for outbound freight is irrespective of the character of the commodity in the car, or of the destination, or of the length of the haul, or of the revenue derived by the trunk-line carrier therefrom.

This defendant admits each, every, and all of the averments of the said bill of complaint contained in subdivision (d) of Paragraph VIII thereof and with respect to the allegations of said subdivision (d) of Paragraph VIII, this defendant alleges that for the service rendered by it touching the loading and switching of L. C. L. freight at the Union Station, this defendant is paid by the trunk-line carriers five cents per 100 pounds for whatever freight is handled by it at the Union Station. This defendant receives no sum or compensation of any kind from the shipper, and the runk-line carrier absorbs out of its through rate the compensation paid by it to this defendant.

With respect to the averments of subdivision (d) of Paragraph
92 VIII of said bill of complaint respecting prepaid L. C. L. freight handled at the Union Station, this defendant says that when any L. C. L. freight delivered to this defendant at the Union Station is prepaid, the amounts collected thereon are immediately forwarded to the trunk-line carrier which carries the freight. This defendant makes no charge for the collection, but for its service in receiving and loading such freight it is paid by the trunk-line carrier making the haul five cents per 100 pounds on all freight handled by it.

With respect to the averments of said subdivision (d) of Paragraph VIII of said bill of complaint touching the arrangement between this defendant and the Baltimore & Ohio Railroad Company, this defendant says that for the service rendered by it to the Baltimore and Ohio Railroad Company the Baltimore and Ohio Railroad Company pays this defendant at the rate of five cents per 100 pounds for all freight distributed through the Union Station and reloaded by it. This defendant does not know the shipper in the transaction. The service is a service rendered by it at the request of the Baltimore & Ohio Railroad Company.

This defendant admits each, every, and all of the averments of subdivision (e) in Paragraph VIII of said bill of complaint, and

with respect to these averments said defendant shows that all live stock coming to points in the stock-yards district is generally moved by the motive power of the trunk-line carriers upon whose lines the freight originates over the rails of this defendant to the loading docks, chutes, and platforms of the Stock Yard Company; and further answering said defendant shows that for the privilege of running their trains of live stock over the tracks of this defendant
93 with their own motive power, each of the trunk-line carriers so using the said tracks of this defendant for live-stock deliveries at the docks, chutes, or platforms of the Stock Yard Company, pays to this defendant a trackage charge, which is a fixed sum per car upon every car passing over said tracks, and is irrespective of the origin of the freight or of the length of the haul or of the character of the live stock contained in the cars, or of the revenue derived by the trunk-line carrier for making the haul.

This defendant admits each, every, and all of the averments of subdivision (f) of Paragraph VIII, and with respect thereto said defendant shows that for the service rendered by it in switching carloads of horses from the cattle docks, chutes, or platforms of the Stock Yard Company to the chutes provided by the Stock Yard Company for the unloading of horses, the trunk-line carriers pay this defendant a regular switching charge fixed at so much per car for each car moved. This switching charge is in addition to the trackage charge paid by the trunk-line carrier for the use of this defendant's tracks from the points of intersection of the tracks of the trunk-line carriers and this defendant to the loading docks, chutes, or platforms of the Stock Yard Company. This defendant further shows that while it is true that such shipments move into the stock yards on through bills of lading, that said through bills of lading are not handled or issued by this defendant, but are handled and issued as is hereinabove set forth in this answer, and in no other way whatsoever.

Further answering this defendant shows that it does not in any of the instances above set forth make the rate upon which either the carload dead freight, or the L. C. L. freight, or the live stock
94 or the horses move; that it does not issue any bills of lading with respect to either inbound or outbound live or dead freight; that it does not have any transaction with respect either to the rate or to the issuance or surrender of bills of lading or to negotiations respecting said bills of lading, with either the consignors or consignees of such freight, or in connection therewith, or in relation thereto, except as has heretofore been set forth in this answer. The charges of this defendant are in all instances referred to in said bill of complaint paid to this defendant by the trunk-line carriers who undertake to make the through haul. This defendant shows that in all instances this defendant's compensation is paid by the trunk-line carriers, and is a fixed sum per switch per car or per 100 pounds, as the case may be, irrespective of the revenue of the trunk-line carrier, or of the destination or origin of the freight, or of the character of the commodities or live stock transported.

Further answering this defendant says that the Junction Company, pursuant to the orders of trunk-line railroad companies, places empty cars at the loading doc[illegible] of the Stock Yard Company, as set forth in subdivision (g) of Paragraph VIII of said bill of complaint.

With respect to the other allegations in said subdivision (g) touching accrued charges in favor of the Stock Yard Company on certain freight this defendant is not advised and it neither admits nor denies the same.

With respect to the averments of subdivision (h) of Paragraph VIII of said bill of complaint this defendant is not advised and it neither admits or denies the same.

This defendant admits the averments in subdivision (i) of Paragraph VIII thereof, and in subdivision (j) of Paragraph VIII
95 thereof, and in subdivision (k) in Paragraph VIII thereof.

With respect to the averments contained in subdivision (k) touching the movements of said freight on through bills of lading, this defendant avers that the said through bills of lading are issued and handled in the same was as the through bills of lading hereinabove referred to in this answer, and in no other way whatsoever.

Further answering this defendant says that it believes it to be true that the method and manner in which the Junction Company now handles the inbound or outbound freight is the same method as that formerly adopted and performed by the Stock Yard Company prior to the time when it leased its line of railroad to the State Line Company, except as hereinafter set forth. This defendant alleges that at the time of the lease from the Stock Yard Company to the State Line Company, the Union Station was not in existence; that the construction and development of the business at the Union Station is due solely to the efforts of the Junction Company.

IX.

With respect to the averments in Paragraph IX of said bill of complaint, touching the method in which waybills are handled and advances made by the Stock Yard Company, this defendant is not advised and neither admits or denies the same.

This defendant alleges that all bills of lading issued for the carriage of live stock from the stock yards are issued by the agents of the trunk-line carriers to the consignors, and are not issued by the Stock Yard Company, or any of its employes, or by this defendant, or any of its employes. Further this defendant alleges
96 that all charges made by it for L. C. L. freight handled by it at the Union Station are made and bills rendered by the auditor of this defendant to the various railroads forwarding the freight and in due course of business, are paid therefor by such trunk-line carriers.

X.

Further answering this defendant admits that it has published tariffs showing the charges which it exacts and collects for its serv-

ices in the transportation of property as hereinabove set forth, and it avers that such tariffs are nothing more or less than a tabulation of its switching charges. It admits also that said publication also shows charges that it makes for freight handled and transported by it in the method set forth in said petition at the Union Station. Also admits that said tariffs are in general circulation in and about the city of Chicago, and especially in and around the stock yards district, and that said tariffs have not been published and filed with the Interstate Commerce Commission, but this defendant denies that the Junction Company is a common carrier engaged in the transportation of property by railroad from points in the State of Illinois to points in other States of the United States, and to points in the territories of the United States and the District of Columbia, and it denies that it is a common carrier engaged in the transportation of property by railroad from points in other States of the United States and from points in the territories of the United States and the District of Columbia to points in the State of Illinois.

97 This defendant admits that the respective trunk-line carriers engaged in the transportation of property by railroad from points in other States to points on the lines operated by this defendant, which said property when it reaches the lines of this defendant is handled in one or more of the methods hereinbefore set out, now have on file with the Interstate Commerce Commission their respective tariffs which show the charges exacted by said trunk-line railroads for the services performed by them, and which show the charges of this defendant for the services performed by it, as set forth in said bill of complaint. This defendants admits that it does not concur or join in such tariffs and it is in no way a party thereto, but this defendant denies that it is a common carrier engaged in the transportation of property from points in the various States and Territories and the District of Columbia to points on its line and from points on its line to points in the various States and Territories of the United States. This defendant denies that it does not keep open to public inspection its schedules showing all rates and charges for transportation between different points on its own road, but this defendant admits that it does not keep open for public inspection its schedule or any schedule showing rates and charges for transportation between different points on its own road and the road of any other carrier. This defendant avers that it is not engaged in the transportation of property from points on its own road to points on the road of any other carrier, and that it is not engaged in the transportation of property from points in the various States and Territories to points in the State of Illinois, and from points in the State of Illinois to points in the various States and Territories of the United States.

98 This defendant admits that the Stock Yard Company is the owner of the fee title to the railroad operated by the Junction Company, and that it owns some of the rolling stock now under the control and operation of the Junction Company under its lease

of December 15, 1897, but this defendant denies that the Stock Yard Company is in fact the owner of a railroad engaged in the transportation of property by railroad from points in the various States and Territories of the United States and in the District of Columbia to points on its line of railroad in the State of Illinois.

This defendant alleges that it does not know whether or not the Stock Yard Company has at all times had knowledge as to the nature of the business methods adopted by this defendant, and it neither admits or denies the allegation of Paragraph X of said bill of complaint with respect thereto.

With respect to the averments in Paragraph X of said bill of complaint, touching the alleged tariffs of the Stock Yard Company, this defendant avers that it is not advised with respect thereto, and that it neither admits or denies the same.

Further answering this defendant avers that Stock Yard Company has no power under the lease to it from this defendant to compel this defendant to operate or use its tracks in any other or different way from that selected by this defendant, or to operate or to adopt any business methods other or different from that selected by this defendant; that under and by virtue of the terms of the said demise no such power is conferred upon the Stock Yard Company or reserved to it; that this defendant is a wholly separate and distinct corporation over which the defendant, the said Stock Yard Company, has no control whatsoever.

99

XI.

Further answering these defendants admit that the rental to be paid by the Junction Company to the Stock Yard Company is fully set forth in article 4 of said Exhibit D.

XII.

Further answering this defendant makes no answer with respect to the averments of Paragraph XII of said bill of complaint touching the organization of the Chicago Junction Railways and the Union Stock Yards Company, and the number of shares alleged to be owned by it in said Stock Yard Company. The defendant alleges that it is not advised respecting the same, and it neither admits or denies the same. This defendant admits that said Chicago Junction Railways and Union Stock Yards Company owns all of the shares of this defendant company, except directors' shares.

XIII.

Further answering this defendant admits that David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer are engaged in the business of buying, slaughtering, and selling packing house products, under the firm name of Louis Pfaelzer & Sons; that their present place of business is located in the city of Chicago, county of Cook, and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by this defendant and the cattle pens of the Stock Yard Company. It admits that the said Louis Pfaelzer &

Sons in the prosecution of their business purchase live stock
100 shipped by the owners of cattle and sold at the yards, and that they slaughter such live stock so purchased at their said packing house. It admits that such live stock moves from its points of origin on through bills of lading to the consignees thereof at the stock yards district, but it avers that said bills of lading are issued and handled, and that said live stock is transported in the method hereinabove pointed out in this answer, and it denies that it is done in any other way whatsoever. It admits that the packing house products manufactured by said Louis Pfaelzer & Sons are sold to consignees in and around Chicago, Illinois, and in other States, and it admits that such packing house products as are sold by said Louis Pfaelzer & Sons to persons in other States are moved and handled in the manner that all freight is moved to and from said stock yards and to and from the industrial plants located in said stock yards district, as set forth in this answer.

This defendant further denies it is engaged in commerce among the several States, as stated in Paragraph XIII of said bill of complaint, and alleges that it is not its duty to file with the Interstate Commerce Commission the reports and monthly statements provided for in section 20 of the act to regulate commerce, and it avers that it is not within the jurisdiction of the Interstate Commerce Commission in any respect whatsoever, for the reason as it alleges that it is engaged solely in intrastate business.

XIV.

Further answering this defendant avers that it has no knowledge touching the alleged contract said to have been made by the Stock Yard Company with said defendants Pfaelzer & Sons, and said to have been guaranteed by said Chicago Junction Railways and
101 Union Stock Yards Company, and with respect to the averments of the bill of complaint relating thereto this defendant neither admits or denies the same.

With respect to the averment in the said bill of complaint that said contract if carried out would tend to increase the earnings of this defendant, this defendant avers that it has no knowledge as to what would be the possible effect of said contract, and makes no answer in relation to said allegations, and neither admits nor denies the same. This defendant avers that it is not a party to said contract and has no direct interest therein. Further answering this defendant alleges that if the effect of said contract should result in increasing the revenues of this defendant, that such effect would be merely incidental to the payment to be made thereunder by the Stock Yard Company, as set forth in said bill of complaint, and would have nothing whatsoever to do with the tariffs, rates, or charges made or charged by this defendant or by any common carrier to any shipper whatsoever for the transportation of freight.

It alleges that said payment, if made, would have nothing whatsoever to do with the transportation of property, and no direct connection therewith.

XV.

With respect to the allegation contained in Paragraph XV of said bill of complaint to the effect that said Chicago Junction Railways and Union Stock Yards Company controls said Stock Yard Company this defendant has no knowledge and makes no answer, but this defendant admits that said Chicago Junction Railways and Union Stock Yards Company may, through its ownership of
102 the stock of this defendant company, control the election of directors of this defendant.

With respect to the averments in said Paragraph XV that if the said Chicago Junction Railways and Union Stock Yards Company enters into an independent contract with said Louis Pfaelzer & Sons it would be made for and on behalf of said Stock Yard Company, this defendant is not advised and neither admits nor denies the same.

XVI.

Further answering this defendant denies that the complainant is entitled to the relief prayed for or any part thereof against this defendant, and so having answer the said bill of complaint this defendant prays to be hence dismissed with its costs in this behalf most grievously sustained; and this defendant will ever pray.

CHICAGO JUNCTION RAILWAY COMPANY,
By WINSTON, PAYNE, STRAWN & SHAW,
Its Solicitors.

RALPH M. SHAW,
Of Counsel.

103 *The joint and several answer of David Pfaelzer et al.*

Filed September 1, 1910.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainants,
vs.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons, defendants. | No. 30041.

The joint and several answer of David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, defendants in said bill of complaint.

These defendants, saving and reserving unto themselves any and all manner of benefit of exception to the many errors and inconsisten-

cies in the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as these defendants
104 are advised it is necessary or material for them to make answer unto, answering say:

These defendants admit that the bill of complaint in this cause of the United States of America was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

These defendants admit that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

As to the averments contained in Paragraph II of the bill of complaint, in respect to the organization of the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Company"), these defendants say that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

III.

As to the averments contained in Paragraph III of the bill of complaint, with respect to the organization of the Chicago Junction Railway Company (hereinafter called the "Junction Company"), these defendants say that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

105 IV.

As to the averments contained in Paragraph IV of said bill of complaint with respect to the organization of the defendant the Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "Investment Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

V.

As to the averments contained in Paragraph V of said bill of complaint, these defendants admit that they are citizens of the State of Illinois, residing in the city of Chicago, but deny that they constituted a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, with their principal place of business and principal operating office in the city of Chicago, and within

the northern district of the State of Illinois, at the time of the filing of the bill of complaint herein.

VI.

These defendants admit each and every of the averments contained in Paragraph VI of the said bill of complaint.

VII.

With respect to the averments contained in Paragraph VII of said bill of complaint, touching the organization and the
106 purposes of the organization of the Stock Yard Company, and its method of doing business, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

With respect to the lease from the Stock Yard Company to the Chicago & Indiana State Line Railway Company, as referred to and marked "Exhibit D," and attached to said bill of complaint, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

VIII.

With respect to the averments contained in Paragraph VIII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

IX.

With respect to the averments contained in Paragraph IX of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

107 X.

With respect to the averments contained in Paragraph X of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XI.

With respect to the averments contained in Paragraph XI of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XII.

With respect to the averments contained in Paragraph XII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XIII.

Further answering, these defendants admit that David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer were engaged in the business of buying, slaughtering, and selling for general consumption slaughterhouse products, under the name and style of Louis
108 Pfaelzer & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook, and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yard Company, but deny that they bought, slaughtered, or sold for general consumption hogs or the products thereof, excepting in the prosecution of their retail business, and therein only were the products of hogs sold at retail.

These defendants deny that they have entered into a certain contract or agreement with the Stock Yards Company, a copy of which is attached to said bill of complaint and marked "Exhibit E" and made a part thereof, or that said contract is now in process of performance.

These defendants further answering aver and state the fact to be that the co-partnership business heretofore conducted by them was taken over on the 8th day of June, 1910, by a corporation organized under and by virtue of the laws of the State of Illinois, named and styled Louis Pfaelzer & Sons, and that said corporation filed its charter in the office of the recorder of deeds of Cook county, Illinois, as provided under and by virtue of the statutes of the State of Illinois in such case made and provided, on the 13th day of June, A. D. 1910.

With respect to the averments in said bill of complaint, and referring particularly to the contract marked "Exhibit E," that the carrying out of said contract will increase the amount of
109 interstate freight coming in and going out of the yards of the said Stock Yards Company, and over the lines of railroad owned by said Stock Yards Company and operated by said Junction Company, and likewise increase the yardage to be collected by said Stock Yard Company on live stock and its charges for feed; and also increase the earnings of the Junction Company by increasing the amount of property transported by the Junction Company in interstate commerce over the lines of railroad owned

by the Stock Yard Company, and thus increase the rentals of the Stock Yard Company accruing from the earnings derived from the transportation of property in interstate commerce by railroad under said lease to the Junction Company, these defendants are not advised, and neither admit nor deny the same, but demand strict proof thereof.

These defendants further answering say that they are not advised as to whether the Junction Company is engaged in commerce among the several States, as stated in Paragraph XIII of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XIV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XIV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

110

XV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XV of said bill of complaint, and neither admit nor deny the same, but demand strict proof there.

XVI.

Further answering these defendants say that the co-partnership heretofore existing between David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer is no longer engaged in the business set out in Paragraph XIII of said bill of complaint or in any business whatsoever.

XVII.

Further answering, these defendants deny that the complainants are entitled to the relief prayed for, or any part thereof, against them or either of them, and so having answered the said bill of complaint these defendants pray to be hence dismissed with their costs in this behalf most grievously sustained; and these defendants will ever pray, etc.

DAVID PFAELZER.
ABE PFAELZER.
JONAS L. PFAELZER.
By McEWEN, WEISSENBACH, SHEIMSKI & MELOAN.
Their Solicitors.

JOSEPH WEISSENBACH.
Of Counsel.

111 *The amended joint and several answer of David Pfaelzer et al.*

Filed September 22, 1910.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, complainants, *vs.* UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons, defendants.	No. 30041.

The amended joint and several answer of David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, defendants in said bill of complaint, filed by leave of court first had and obtained.

These defendants, saving and reserving unto themselves any and all manner of benefit of exception to the many errors and inconsistencies in the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as these defendants are advised it is necessary or material for them to make answer unto, answering, say:

These defendants admit that the bill of complaint in this
112 cause of the United States of America was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

These defendants admit that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

As to the averments contained in Paragraph II of the bill of complaint, in respect to the organization of the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

III.

As to the averments contained in Paragraph III of the bill of complaint, with respect to the organization of the Chicago Junction Railway Company (hereinafter called the "Junction Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

IV.

As to the averments contained in Paragraph IV of said bill of complaint, with respect to the organization of the defendant
113 the Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "Investment Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

V.

As to the averments contained in Paragraph V of said bill of complaint, these defendants admit that they are citizens of the State of Illinois, residing in the city of Chicago, but deny that they constituted a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, with their principal place of business and principal operating office in the city of Chicago, and within the northern district of the State of Illinois, at the time of the filing of the bill of complaint herein.

VI.

These defendants admit each and every of the averments contained in Paragraph VI of the said bill of complaint.

VII.

With respect to the averments contained in Paragraph VII of said bill of complaint, touching the organization and the purposes of the organization of the Stock Yard Company, and its method of doing business, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

114 With respect to the lease from the Stock Yard Company to the Chicago & Indiana State Line Railway Company, as referred to and marked "Exhibit D," and attached to said bill of complaint, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

VIII.

With respect to the averments contained in Paragraph VIII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

IX.

With respect to the averments contained in Paragraph IX of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

X.

With respect to the averments contained in Paragraph X of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

115

XI.

With respect to the averments contained in Paragraph XI of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XII.

With respect to the averments contained in Paragraph XII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XIII.

Further answering these defendants admit that David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer were engaged in the business of buying, slaughtering, and selling for general consumption, slaughter house products, under the name and style of Louis Pfaelzer & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook, and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yards Company.

116 These defendants further answering aver and state the fact to be that the copartnership business heretofore conducted by them was taken over on the 8th day of June, 1910, by a corporation organized under and by virtue of the laws of the State of Illinois, named and styled Louis Pfaelzer & Sons, and that said corporation filed its charter in the office of the recorder of deeds of Cook County, Illinois, as provided under and by virtue of the statutes of the State of Illinois in such case made and provided, on the 13th day of June, A. D. 1910.

These defendants further answering admit that they agreed to enter into a certain contract or agreement with the Stock Yards Company, a copy of which contract or agreement is attached to said bill of complaint and marked "Exhibit E" and made a part thereof.

With respect to the averments in said bill of complaint and referring particularly to the contract marked "Exhibit E" and to the effect that the carrying out of the said contract will increase the amount of interstate freight coming in and going out of the yards of the said Stock Yards Company and over the lines of the railroad owned by the Stock Yards Company and operated by the Junction Company, and likewise increase the earnings collected by said Stock Yards Company on live stock and its charges for feed; and also increase the earnings of the Junction Company by increasing the amount of the property transported by the Junction Company in insterstate commerce over the lines of the railroad owned by the Stock Yards Company and thus increasing the rentals of the Stock

117 Yards Company accruing from the earnings derived from the transportation of property in interstate commerce by railroad under said lease to the Junction Company, these defendants are not advised and neither admit nor deny the same, but demand strict proof thereof; and state the fact to be that all of such effects, if true, are merely incidental; and further say that the payment of moneys provided for in said agreement or contract has nothing whatever to do, nor was it, or is it intended to have anything to do with the transportation of property and the rates and charges therefor, and has no connection therewith whatsoever.

These defendants further answering say that they deny that the payment of the said money to them, or either of them, or to the said corporation, Louis Pfaelzer & Sons, will be a rebate and an unlawful discrimination and violation of the act to regulate commerce and deny that it will constitute a device whereby an undue advantage will be given to and an unlawful discrimination practiced in favor of them, or either of them, by the said Stock Yards Company; and further deny that such payment will constitute a concession, rebate, or drawback and an unlawful discrimination whereby the property of them, or either of them, or of said Louis Pfaelzer & Sons, the corporation, is by a device transported as interstate commerce over the lines of railroad owned by the Stock Yards Company at a less charge than is charged to other shippers for the same service; and

these defendants deny that such payment will constitute a violation of the act of Congress approved February 19th, 1903, and as amended June 29th, 1906, commonly known as the "Elkins law."

118 These defendants further answering say that at no time during the negotiations conducted between them, or either of them, and the said Stock Yards Company, subsequent to the proposition of such Stock Yards Company to pay to them the amount agreed upon and set out in said contract, was anything said to them, or either of them, with reference to the transportation of property of any kind or the charges to be exacted by said company from these defendants by any of the officers or agents of said Stock Yards Company, or anyone acting for it; nor is there any agreement or understanding expressed or implied on the subject whatsoever.

These defendants further answering say that prior to and until the 21st day of January, 1910, they were copartners with Louis Pfaelzer, and were engaged in the business of buying, slaughtering, and selling for general consumption, slaughter house products, under the name and style of Louis Pfaelzer & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook, and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yards Company, and that while so engaged in business certain inspectors and investigators representing the Bureau of Animal Industry, a department of the United States Department of Agriculture (hereinafter referred to as "Agricultural Department"), in the course of the prosecution of their duties as such, visited and inspected the packing plant then operated by the said Louis Pfaelzer & Sons at a time early in

119 the year 1907, and that after such inspection said Louis Pfaelzer & Sons received a notice in writing from the said Agricultural Department under date of March 30th, 1907, directing them (the said Louis Pfaelzer & Sons) to make certain changes, replacements, and improvements, the making of which changes, replacements, and improvements necessitated the expenditure of large sums of money.

These defendants further answering say that the said Louis Pfaelzer & Sons endeavored to and did comply with said notice in writing, under said date, and that thereafter, to wit, on the 22nd day of October, 1908, they received a further notice in writing from the said Agricultural Department, in substance, to the effect that they, the said Louis Pfaelzer & Sons, were directed to take immediate steps to provide a new establishment for their business, which would meet with the requirements of the regulations of the said Agricultural Department, and that upon receipt of said notice said Louis Pfaelzer & Sons endeavored to secure a suitable site for the erection of an establishment which would meet with the requirements of the regulations of the said Agricultural Department; that to comply with the said direction of the said Agricultural Department it would

become necessary to destroy the entire plant then occupied by the said Louis Pfaelzer & Sons, which would thereby cause the said Louis Pfaelzer & Sons to sustain great loss; that shortly after the receipt of said notice and on, to wit, the 8th day of January, 1909, said Louis Pfaelzer & Sons received a further notice in writing
120 from the Honorable James Wilson, Secretary of the Department of Agriculture of the United States, to the effect that on and after the 10th day of April, 1909, Government inspection of the products of said Louis Pfaelzer & Sons would be denied to said Louis Pfaelzer & Sons.

These defendants further answering say that the carrying into effect of such order of the said Secretary of the United States Department of Agriculture would mean, in effect, the total destruction of their entire business; that thereupon the said Louis Pfaelzer & Sons called upon the officers of the Stock Yards Company for financial assistance in the matter of the erection of a new and modern packing plant, and that the said Stock Yards Company refused to the said Louis Pfaelzer & Sons the financial assistance so sought; that said Louis Pfaelzer & Sons, in order to protect the business already established by them in the city of Chicago and in the various States of the United States of America, took steps to secure a site for the erection of a new packing plant in the city of Kansas City, Missouri, they being unable to secure a proper and suitable site for the erection of such plant in the city of Chicago in said Stock Yards district without paying therefor so large a sum of money as to make it doubtful as a matter of business expediency to expend; that shortly thereafter the Stock Yards Company, by its officers and agents, being informed of the proposed removal of the packing plant of said Louis Pfaelzer & Sons to Kansas City, Missouri, negotiations between these defendants and said Stock Yards Company were resumed and as a result thereof said Stock Yards Company agreed with the said Louis Pfaelzer & Sons that if they would re-
121 main within the district known as the Stock Yards district and erect a packing plant contiguous to and in the vicinity of the cattle pens of the Stock Yards Company they, the said Stock Yards Company, would contribute towards the erection of such packing plant the sum of $50,000 in cash; that relying upon the good faith of this arrangement the said Louis Pfaelzer & Sons abandoned their plans for the erection of a new packing plant in Kansas City, Missouri, and proceeded to and did purchase a large amount of real estate in the said Stock Yards district, paying therefor the sum of twenty-nine thousand seven hundred and fifty-five ($29,755) dollars; that said Louis Pfaelzer & Sons employed the services of competent engineers and architects to prepare plans for the proposed buildings, which said plans have been prepared and have been submitted to and revised and accepted by the said Agricultural Department.

These defendants further answering say that they are the sole stockholders and sole directors of the corporation named and styled

Louis Pfaelzer & Sons, which said corporation is the successor to the co-partnership heretofore existing between these defendants, and that David Pfaelzer, Abe Pfaelzer and Jonas L. Pfaelzer are the president, vice president, and secretary-treasurer, respectively, of said corporation; that these defendants relying upon the good faith of the said Stock Yards Company to carry into effect the provisions of the said contract, entered into another certain contract with the Ralph and Sumner Sollitt Company, general contractor, for
122 the erection of the buildings to compose the packing plant, in accordance with the plans and specifications hereinbefore referred to, and agreed to pay under said contract to said Ralph and Sumner Sollitt Company, for the erection and construction of said packing plant, two hundred and twenty thousand ($220,000) dollars; that said building is in course of erection and nearing completion and that said corporation has caused to be issued its certain bonds in the total sum of one hundred and twenty-five thousand ($125,000) dollars, the payment of which bonds is secured by a trust deed to A. S. Peabody, trustee, covering the property of the said corporation, and that these defendants, as individuals, relying upon the good faith of the said Stock Yards Company and its purpose to carry out the agreement set up in said contract marked "Exhibit E" guaranteed the payment of said bonds so issued at the various maturities thereof.

These defendants further answering say that the entering into said contract by them, or either of them, or by the said corporation, Louis Pfaelzer & Sons, is not a violation of any act of Congress in such case made and provided.

These defendants aver that the said corporation, Louis Pfaelzer & Sons, is the successor of the partnership formerly conducted by these defendants under and by virtue of the arrangement provided for in said Exhibit E, and these defendants admit that unless restrained by the order of this honorable court they will cause said corporation to execute said contract known as "Exhibit E" and to carry out the terms and provisions thereof, for and on behalf of these defendants.

123 XIV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XIV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XVI.

Further answering, these defendants say that the co-partnership heretofore existing between David Pfaelzer, Abe Pfaelzer and Jonas L. Pfaelzer is no longer engaged in the business set out in Paragraph XIII of said bill of complaint or in any business whatsoever.

XVII.

Further answering, these defendants ney that the complainants are entitled to the relief prayed for, or any part thereof, against them or either of them, and so having answered the said bill of complaint, these defendants pray to be hence dismissed with their costs in this behalf most grievously sustained. And these defendants will ever pray, etc.

DAVID PFAELZER,
ABE PFAELZER,
JONAS L. PFAELZER,
By McEWEN, WEISSENBACH, SHRIMSKI & MELOAN,
Their Solicitors.

JOSEPH WEISSENBACH,
Of Counsel.

124 *Answer of defendant, the Chicago Junction Railways and Union Stock Yards Company.*

Filed October 22, 1910.

Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

THE UNITED STATES OF AMERICA, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, complainant, *vs.* UNION STOCK YARD AND TRANSIT COMPANY of Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, defendants.	No. 30041. In equity.

The answer of the Chicago Junction Railways and Union Stock Yards Company (called in the bill of complaint filed herein, the "Investment Company"), one of the defendants in the above-entitled cause.

125 This defendant, saving and reserving unto itself any and all manner of benefit of exception to the many errors and inconsistencies in the bill of complaint of the said complainant manifest, for answer thereunto, or unto so much thereof as this defendant is advised it is necessary or material for it to make answer unto, answering, says:

This defendant admits that the bill of complaint in this cause of the United States was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

This defendant admits that the Interstate Commerce Commission was created and established and that it now exists as averred in Paragraph II of the bill of complaint.

II.

This defendant admits each and all of the averments contained in Paragraphs III, III, IV, V, and VI of the bill of complaint.

III.

With respect to the averments contained in Paragraph VII of the bill of complaint, touching the purpose of the organization of the Union Stock Yard and Transit Company of Chicago, herein called the "Stock Yard Company," this defendant avers that it has no knowledge respecting the purposes of the organization of such company except as the same are set forth in its charter, a copy of which is attached to the bill of complaint and is marked "Exhibit A."

126 This defendant denies that said company was organized for any purpose whatsoever except that disclosed in and by said "Exhibit A."

With respect to the averments contained in Paragraph VII of the bill of complaint, as to the acquisition of real estate by said Stock Yard Company, the development of its business, the alleged construction of its tracks, loading docks, chutes and platforms, the alleged connections said to have been made by it with so-called "trunk-line carriers," the method by which it is alleged in said Paragraph VII that live and dead freight is moved to and from said Chicago Stock Yards, the services alleged in said Paragraph VII to be performed by the employees of said Stock Yard Company, the manner of loading and unloading freight, the filing of tariffs with the Interstate Commerce Commission, the details of the actual business operations of said company and the charges made therefor, the origin and destination of freight moving to and from said Chicago Stock Yards, the services rendered by said company with respect to the feeding and watering of live stock and the charges exacted therefor and as to whether or not schedules or tariffs of said charges are filed with the

Interstate Commerce Commission, this defendant avers that it has no information or knowledge respecting any of said averments, and that it therefore neither admits nor denies the same, but says that it believes to be true the averments with respect thereto in the answer of the defendant the Stock Yard Company, filed in this cause.

This defendant admits the averments in Paragraph VII of said bill of complaint with respect to the lease made by the Stock Yard Company to a certain other corporation known as the Chicago and Indiana State Line Company, but as to whether or not under
127 the terms of said lease said defendant Stock Yard Company leased or turned over its loading docks, chutes, and platforms and other loading and unloading facilities, only retaining the use thereof, this defendant avers that it has no knowledge, and that it therefore neither admits nor denies said allegations, but says that it believes the answers of the defendants Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railway Company, herein respectively called the "Stock Yard Company" and the "Junction Company," are true in that respect.

IV.

This defendant admits each and all of the averments contained in Paragraph VIII of the bill of complaint with respect to the organization of the Chicago and Indiana State Line Company and its consolidation with a certain other corporation known as the Chicago, Hammond and Western Railroad Company under the name of the Chicago Junction Railway Company. It also admits that said Junction Company on November 1, 1907, sold to the East Chicago Belt Company all that part of its railroad from Franklin Park, Illinois, to Hammond and Whiting, Indiana, and that the said Junction Company does not now own or operate any tracks except those operated by it under the lease from the defendant Stock Yard Company, to the Chicago and Indiana State Line Company, and this defendant admits that all such tracks are wholly located within the county of Cook and State of Illinois.

With respect to the averments contained in said Paragraph VIII, touching the present mileage of said defendant Junction Com-
128 pany and the number of industries served by it, this defendant says that it has no knowledge but that it believes the same to be true.

With respect to each and all of the averments contained in subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of Paragraph VIII of the bill of complaint this defendant says that it has no knowledge, and that it therefore neither admits nor denies the same.

V.

With respect to each and all of the averments contained in Paragraph IX of the bill of complaint, as to the details of the bookkeep-

ing and business operations of the defendant Stock Yard Company, this defendant says it has no knowledge, and that it therefore neither admits nor denies the same.

VI.

With respect to each and all of the averments contained in Paragraph X of the bill of complaint as to the details of the business operations of the Junction Company and its method of doing business and its alleged failure to file certain of its tariffs and its duty so to do, this defendant says that it has no knowledge, and that it therefore neither admits nor denies the same.

VII.

With respect to the averments contained in Paragraph XI of the bill of complaint this defendant admits and avers that the rental to be paid by the Junction Company to the Stock Yard Company is fully set forth in Article IV of "Exhibit D" annexed to the bill of complaint.

129 VIII.

This defendant admits that it was organized in July, 1890, as an investment company for the purpose, among other things, of acquiring and holding shares of the capital stock of the Union Stock Yard and Transit Company of Chicago. It admits that "Exhibit B" to said bill of complaint is a copy of its charter. It avers that under and by virtue of the terms of its charter it was also organized for the purpose of investing in and purchasing and holding the securities of other persons and corporations. It admits that after its organization it became the owner of, and is now the owner of, over ninety per cent of the shares of the capital stock of said Stock Yard Company, and that after the organization of the defendant, the Junction Company, it acquired all of the shares of stock of said company, except the shares held and owned by its directors as qualifying shares. This defendant further admits that the greater part of its income is derived from dividends paid to it upon the shares of stock owned by it in said Stock Yard Company and in said Junction Company, but it avers that it has substantial investments in other enterprises from which it receives an annual income. It also avers that there are now outstanding, in the names of third persons, a number of shares of said Stock Yard Company, over which shares this defendant has no control and in which it has no financial or other interest. It further avers that it does not own the property of either the Stock Yard Company or the Junction Company, and that it has no legal interest in the property of either of said two companies and does not manage or control the same, but that said two companies are separate and distinct corporations from this defendant.

130 IX.

This defendant admits the averments contained in Paragraph XIII of the bill of complaint with respect to the organization of the firm of Louis Pfaelzer & Sons, and the location and character of its business.

This defendant also admits that it has agreed to guarantee a certain contract between the defendant Stock Yard Company and Louis Pfaelzer & Sons, a copy of which is attached to the bill of complaint as Exhibit E.

This defendant avers that said Louis Pfaelzer & Sons, while engaged at or near the Stock Yards district in Chicago in the business of slaughtering live stock and of preparing and selling products thereof, were duly ordered in the year 1907 by certain officials of the United States, representing the Department of Agriculture, to make changes in their plant, and that later, to wit, in January, 1909, said Louis Pfaelzer & Sons, because of the fact that the changes previously ordered had not been made, were duly notified by the Department of Agriculture that on and after the 10th day of April, 1909, the United States Government inspectors would refuse to further inspect the product of the plant of the said Louis Pfaelzer & Sons; that in order to comply with said order of the commission it would have been necessary for said Louis Pfaelzer & Sons to destroy their said packing plant and erect a new one; that thereupon the said Louis Pfaelzer & Sons proposed to move their said business from Chicago to Kansas City; that at Kansas City there is another live stock market and stock-yards company in active competition with the stock yards of the Union Stock Yard and Transit Company of Chicago;
131 that the removal of the business of said Louis Pfaelzer & Sons from the market at the yards of the Union Stock Yard and Transit Company of Chicago to the Kansas City market would have been a direct loss of custom to said Union Stock Yard and Transit Company; and that as a result of negotiations between this defendant and the said Louis Pfaelzer & Sons, and for the purpose of protecting its investment by retaining the business of Louis Pfaelzer & Sons at or near the Chicago Stock Yards, this defendant agreed to guarantee the faithful performance by the Union Stock Yard and Transit Company of Chicago of the contract attached to the bill of complaint and marked "Exhibit E."

With respect to the averments contained in Paragraph XIII of the bill of complaint, as to the method by which the freight consigned to or from said Louis Pfaelzer & Sons is moved in and out of the Stock Yards district at Chicago, this defendant says that it has no knowledge and that it, therefore, neither admits nor denies the same. But this defendant denies that the payment by it of said sum of money or guaranty mentioned in said contract would constitute a payment of money by an owner of a railroad and a common carrier engaged in the transportation of property by railroad between points in the va-

rious States of the United States to a shipper of property transported between points in the various States of the United States over a line of railroad, whereby such shipper would have his property transported in interstate commerce by railroad at less rates than are exacted by a common carrier from other persons moving property of the same character and description between the same points at the same time.

132 This defendant further answering denies that it is subject to the jurisdiction of the Interstate Commerce Commission and denies that said guaranty would be or constitute a violation of section 2 of the act to regulate commerce, and denies that such payment, if made by this defendant, would constitute a device whereby an undue advantage would be given to and an unlawful discrimination would be practiced in favor of said Louis Pfaelzer & Sons, as averred in Paragraph XIII of the bill of complaint, or otherwise, and denies that such payment, if made by this defendant, would constitute a concession, rebate, or unlawful discrimination whereby the property of said Louis Pfaelzer & Sons would be by any device transported in interstate commerce over a line of railroad at less charges than are exacted from other shippers for the same services or at less than the published tariff charges therefor.

X.

Further answering this defendant denies that if it should make good the proposed guaranty in said Exhibit E, such act would be done for the Union Stock Yard and Transit Company. This defendant avers that if said guaranty is made good by this defendant, it will be done by this defendant for the sole purpose of protecting and conserving its investment and what this defendant believes to be its business interests.

And this defendant avers that if this defendant should at any time hereafter make any payments under said guaranty, they would be entirely separate and distinct from any published tariffs of any railroad company, and have no connection directly or indirectly therewith, and would have nothing whatsoever to do directly

133 or indirectly with the charges made for transportation, or the payments due from a shipper to a carrier therefor.

XI.

Further answering this defendant avers that the business of the Stock Yard Company in the conduct of a live-stock market at Chicago is dependent upon the permanent and stable demand and market created by the presence of numerous slaughtering, packing and canning establishments situated in the immediate vicinity of the premises of the yards and kept in operation during the whole year, whose owners and managers constitute the majority in amount of the buyers at such market and purchase over seventy per cent

of the live stock shipped there: that such permanent and stable demand by such establishments is the principal inducing cause for shipments of live stock for sale at said yards: that it would be impracticable to maintain or establish large stock yards at Chicago without at the same time having in the direct vicinity of such yards slaghtering, packing, and canning establishments in continuous operation, so as to furnish a continuous demand and market for any cattle and other live stock that might be shipped there for sale: that large stock yards could not be profitably conducted at Chicago without this permanent, constant, and stable demand so afforded by the presence in continuous operation of adjacent slaughtering, packing, and canning establishments, and that the removal of the establishments now situated in the immediate vicinity of the yards of said Stock Yard Company would greatly diminish the demand and market for live stock at said yards and reduce the number of buyers at said yards and correspondingly diminish and reduce the
134 shipments of live stock to said yards and the gross and net income of said Stock Yard Company.

XII.

Further answering this defendant avers that during the years 1907, 1908, and 1909 there were received at the yards of the Stock Yard Company more than 45,000,000 head of live stock, exclusive of horses, or an average of over 15,000,000 head of live stock per annum, and that of such number there were purchased by slaughtering, packing, and canning establishments in the immediate vicinity of such Chicago Stock Yards approximately seventy per cent.

This defendant further avers that the charges of said Stock Yard Company are paid by the shippers of live stock and not by the purchasers at the yards, and that of the total yardage charges collected by it fully 95 per cent has always been paid by the producers and shippers of live stock and not by the buyers at said yards or by persons owning or interested in slaughtering, canning or packing establishments.

XIII.

This defendant further answering alleges that for more than twenty-five years last past the Chicago Stock Yards have been competing for business with other yards established in other cities and States, and that the principal of said yards have been or are located at Kansas City in the States of Kansas and Missouri: Indianapolis in the State of Indiana: Omaha in the State of Nebraska: St. Joseph in the State of Missouri: East St. Louis in the State of Illinois: Milwaukee in the State of Wisconsin: Sioux City in the State
135 of Iowa: Fort Worth in the State of Texas, and Oklahoma in the State of Oklahoma: and that the several corporations owning and operating said stock yards and competing with the Chicago yards and Stock Yard Company have during all said period

been aiding and subsidizing slaughtering, canning, and packing establishments, in order to induce their location or operation upon premises directly adjoining their several stock yards; that such practice of so inducing and subsidizing the location of slaughtering, packing, and canning establishments began with the St. Louis Stock Yards in 1876, and has continued to be the practice of said yards until the present time; that the most recent instances have been by the Fort Worth and Oklahoma Stock Yards Companies during the present year, 1910; that all of said stock yards maintain markets or yards for the sale of live stock in competition with the yards of the Stock Yard Company, and that they and some of the communities in which they are located are constantly endeavoring to secure the location of slaughtering, canning, and packing establishments in their immediate vicinity in order more efficiently to compete with the Chicago Stock Yard Company.

This defendant further avers that in order to meet the inducements offered by the competitors of said Chicago Stock Yard Company, and to prevent the removal of the live-stock market from Chicago to other points, it has heretofore been deemed necessary by this defendant as the party most interested in the Chicago yards to offer inducements and to grant subsidies so as to secure the maintenance and continuance of existing slaughtering, canning, and packing establishments at the Chicago yards, and the location of new slaughtering, canning, and packing establishments, and the extension and
136 increase of the facilities of those already located there; and that to this end, beginning in the year 1891 and continuing to the present time, it has been the policy of this defendant to grant, and it has granted, large inducements and subsidies to such existing establishments, and that heretofore, beginning in 1891, this defendant made and entered into numerous agreements providing for such grants or subsidies, in consideration of covenants on the part of owners of slaughtering, canning, and packing establishments to continue their businesses in the vicinity of the Chicago yards and to purchase their live stock at such yards or to establish new packing plants in such vicinity and make purchases at said yards.

This defendant further avers that solely for the purposes above alleged it has heretofore entered in good faith into numerous contracts providing for subsidies or inducements to the owners of slaughtering, canning, and packing plants; that it has expended for that purpose under said contracts the sum of about $1,000,000 since July, 1891; that most of such contracts are still in force and effect; that by virtue thereof this defendant has heretofore prevented the removal of many plants located in the vicinity of the Chicago yards, and has induced the increase of facilities and buying capacity of existing plants, and has promoted and secured the location of other plants and thereby increased and protected the live-stock market at Chicago and greatly added to the income and revenue of the Stock Yard Company and the Junction Company, and that its guaranty of "Ex-

hibit E" to the bill of complaint was in pursuance of such policy of maintaining the market at Chicago, and not otherwise.

Wherefore this defendant submits to this honorable
137 court that the complainant, the United States of America, is not entitled to the relief prayed for or any part thereof as against this defendant, and having answered such bill of complaint this defendant prays to be hence dismissed with its costs in this behalf most grievously sustained.

And as in duty bound this defendant will ever pray, &c.

THE CHICAGO JUNCTION RAILWAYS AND
UNION STOCK YARDS COMPANY.
By GUTHRIE, BANGS & VAN SINDEREN,
Its Solicitors,
No. 44 Wall Street, New York.

WILLIAM D. GUTHRIE,
Of Counsel.

138 *Certificate of Attorney General.*

Filed November 16, 1910.

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commission, complainants.

vs.

UNION STOCK YARD COMPANY OF CHICAGO, A CORPORATION, and others, defendants.

To the clerk of said court:

I hereby certify that the above-entitled cause, now pending in said court, is a suit in equity brought by the United States against the Union Stock Yard and Transit Company of Chicago and others, and that said suit is, in my opinion, a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,'" approved February 11, 1903, and complying with the provisions of the act to regulate commerce of February 4, 1887, as amended by the act of June 29, 1906, and more particularly of section 16 of said act, you will file this certificate among the records of the above entitled court, and immediately furnish a copy thereof to each of the circuit judges of the Seventh Circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest prac-

ticable date, before not less than three of the circuit judges of said circuit, as provided by the said act of February 11, 1903.

WM. S. KENYON,
Acting Attorney General.

WASHINGTON, D. C., *November 14, 1910.*

139 *Order transferring cause to United States Commerce Court.*

Entered February 25, 1911.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

SATURDAY, FEBRUARY 25TH, 1911.

Present: Honorable Christian C. Kohlsaat, circuit judge.

THE UNITED STATES OF AMERICA *vs.* UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons.	Chancery. 30911.

It is ordered by the court that the clerk of this court transmit to and file in the United States Commerce Court the originals of all papers filed in this case, and a certified transcript of all record entries up to and including this date, in compliance with section 6 of an act to create a Commerce Court and to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes, approved June 18th, 1910.

140 *Order granting David Pfaelzer et al. leave to file an amended answer.*

Entered April 18, 1911.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON APPLICATION OF THE Attorney General, at request of Interstate Commerce Commission, petitioner. *v.* UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO et al., respondents.	No. 15.

On motion of respondents David Pfaelzer, Abe Pfaelzer, and Jones L. Pfaelzer, doing business under the firm name of Louis Pfaelzer

and Sons, by McEwen, Weissenbach, Shrimski, and Meloan, their solicitors, in open court made, for leave to file an amended answer, it is ordered that leave be, and the same is hereby, given to the said respondents to file an amended answer within fifteen days from this date provided the same when filed does not result in delaying the hearing of said cause on the date on which the same is now set.

MARTIN A. KNAPP,
Presiding Judge.

141 *The second amendment of David M. Pfaelzer et al.*

Filed May 1, 1911.

In the Commerce Court of the United States.

UNITED STATES OF AMERICA, UPON THE PETITION OF THE Attorney General, at the request of the Interstate Commerce Commission,
vs.
UNION STOCK YARDS AND TRANSIT COMPANY ET AL., respondents. } No. 15.

The second amendment of David M. Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, respondents, impleaded, etc., to the petition of complainant, by leave of court first had and obtained.

Amend paragraph thirteen of the answer of said respondents, as heretofore firstly amended, by adding thereto the following:

That at and long prior to the time of the making of said contract for the payment of $50,000, there were stock yards located in various cities of the West and Southwest, namely, at Chicago, Illinois; Milwaukee, Wisconsin; Sioux City, Iowa; Omaha, Nebraska; St.
142 Joseph, Missouri; Kansas City, Missouri; St. Louis, Missouri; East St. Louis, Illinois; Fort Worth, Texas; Dallas, Texas; St. Paul, Minnesota; Denver, Colorado; Oklahoma City, Oklahoma, at which were located large packing and slaughtering plants, which consumed live stock and furnished a market for the same.

That it has been customary with all of the respective owners of such stock yards, for the purpose of building up and retaining a market, to assist persons and corporations by way of donations, land, or money, or both, to locate packing and slaughtering and other plants, which not only benefited such stock yard owners, but also was of great value to the stock raisers of the contiguous district and equalized the handling of stock throughout the country, by furnishing various convenient places of slaughter and preparation for the market.

That, as an illustration of the extent to which this custom is followed, these respondents aver that within the past year the owners of

the yards at Oklahoma City paid to a large packer the sum of $750,000 to locate a slaughter house at such yards.

As a further illustration respondents aver that several years ago the said Stock Yards Company at Chicago gave to a packer land for a plant and $500,000 in cash. That this practice and custom has existed for many years and is the result of competition between and among the several cities having stock yard industries.

That these respondents aver, on information and belief, at the time when it became necessary for these respondents to build a new plant or cease business, they could have obtained from the
143 owners of the stock yards at Kansas City $200,000 to locate at that place.

That the slaughtering business at Chicago is conducted by about twelve persons and corporations, of which six do about 95%, and of the remaining 5%, these respondents do about 1% of the total business.

That some one or more of the so-called "big six" doing 95% of the business as aforesaid have plants at all of the places above named and by reason of their size and facilities and diverse locations, are able to exercise a great control of the market in all places, and but for the competition of the smaller packers, like these respondents, would exercise an almost absolute control over prices, and a substantial monopoly.

That these respondents do not, nor does their successor, pay any freight to railroads whatever, except that in certain months of each year, they are usually unable to get a high enough grade of beef for their trade, in Chicago, and therefore buy in the Kansas City market in those months cattle by the carload, which they ship to Chicago and kill at their said plant, and occasionally purchase a few hogs, and sometimes lambs in the Louisville, Ky., market; that the freight paid for this service in the five years last past was for cattle $10,911.61, for lambs $3,099.05, for hogs $169.34, making a total of $14,180, or a yearly average of $2,836 paid to the Chicago Junction Railway. That otherwise respondents substantially pay no freight.

That all coal, salt, and supplies are furnished at a lump
144 price by weight f. o. b. cars at the plant, and any freight paid therefor is by respondents as agents of the seller and deducted from the lump sale price on settlement.

That in the past almost the entire product of the plant, excepting by-products, has been sold to the local city trade, and not handled by rail; that the freight on whatever shipments are made is paid by the consignee and not for or by these respondents or their successor.

That the establishing of the plant of these respondents at the yards takes up about 120 feet of side track and there is much other property available for other plants on the side tracks and switches of the said Stock Yards Company.

That said $50,000 is to be paid solely as an assistance to the erection of said new plant and enters into the capitalization thereof, and was and is purely a legitimate business transaction, promoting

the interests of these respondents, the Stock Yards Company, the railroads, the stock raisers, the labor market, and the retail butcher and consumer.

DAVID M. PFAELZER,
ABE PFAELZER,
JONAS L. PFAELZER,
By McEWEN, WEISSENBACH, SHRIMSKI & MELOAN,
Their Solicitors.

WILLARD M. McEWEN,
Of Counsel.

145 *The secondly amended joint and several answer of David M. Pfaelzer et al.*

Filed May 1, 1911.

In the Commerce Court of the United States.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission, complainants,
vs.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, A corporation: The Chicago Junction Railway Company, a corporation: The Chicago Junction Railways and Union Stock Yards Company, a corporation: and David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons, defendants. } No. 15.

The amended joint and several answer as secondly amended of David M. Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, defendants in said bill of complaint, filed by leave of court first had and obtained.

These defendants, saving and reserving unto themselves any and all manner of benefit of exception to the many errors and inconsistencies in the bill of complaint of the said complainants manifest, for answer thereunto, or unto so much thereof as these defend-
146 ants are advised it is necessary or material for them to make answer unto, answering say:

These defendants admit that the bill of complaint in this cause of the United States of America was filed upon the application of the Attorney General at the request of the Interstate Commerce Commission.

I.

These defendants admit that the Interstate Commerce Commission was created, established, and that it now exists as averred in Paragraph I of said bill of complaint.

II.

As to the averments contained in Paragraph II of the bill of complaint, in respect to the organization of the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

III.

As to the averments contained in Paragraph III of the bill of complaint, with respect to the organization of the Chicago Junction Railway Company (hereinafter called the "Junction Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

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IV.

As to the averments contained in Paragraph IV of said bill of complaint, with respect to the organization of the defendant The Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "Investment Company"), these defendants say that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

V.

As to the averments contained in Paragraph V of said bill of complaint, these defendants admit that they are citizens of the State of Illinois, residing in the city of Chicago, but deny that they constituted a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, with their principal place of business and principal operating office in the city of Chicago, and within the northern district of the State of Illinois, at the time of the filing of the bill of complaint herein.

VI.

These defendants admit each and every of the averments contained in Paragraph VI of the said bill of complaint.

VII.

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With respect to the averments contained in Paragraph VII of said bill of complaint, touching the organization and the purposes of the organization of the Stock Yard Company, and its method of doing business, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

With respect to the lease from the Stock Yard Company to the Chicago & Indiana State Line Railway Company, as referred to and marked "Exhibit D," and attached to said bill of complaint, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

VIII.

With respect to the averments contained in Paragraph VIII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

IX.

With respect to the averments contained in Paragraph IX of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same, and that they neither admit nor deny the same, but demand strict proof thereof.

149 X.

With respect to the averments contained in Paragraph X of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XI.

With respect to the averments contained in Paragraph XI of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XII.

With respect to the averments contained in Paragraph XII of said bill of complaint and any and all averments therein contained, these defendants aver that they are not advised respecting the same and that they neither admit nor deny the same, but demand strict proof thereof.

XIII.

Further answering these defendants admit that David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer were engaged in the business of buying, slaughtering, and selling for general consumption, slaughter house products, under the name and style of Louis Pfaelzer

150 & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yards Company.

These defendants further answering aver and state the fact to be that the co-partnership business heretofore conducted by them was taken over on the 8th day of June, 1910, by a corporation organized under and by virtue of the laws of the State of Illinois, named and styled Louis Pfaelzer & Sons, and that said corporation filed its charter in the office of the Recorder of Deeds of Cook County, Illinois, as provided under and by virtue of the statutes of the State of Illinois in such case made and provided, on the 13th day of June, A. D. 1910.

These defendants further answering admit that they agreed to enter into a certain contract or agreement with the Stock Yards Company, a copy of which contract or agreement is attached to said bill of complaint and marked "Exhibit E" and made a part thereof.

With respect to the averments in said bill of complaint and referring particularly to the contract marked "Exhibit E" and to the effect that the carrying out of the said contract will increase the amount of interstate freight coming in and going out of the yards of the said Stock Yards Company and over the lines of the railroad owned by the Stock Yards Company and operated by the Junction Company, and likewise increase the earnings collected by

151 said Stock Yards Company on live stock and its charges for feed; and also increase the earnings of the Junction Company by increasing the amount of the property transported by the Junction Company in interstate commerce over the lines of the railroad owned by the Stock Yards Company and thus increasing the rentals of the Stock Yards Company accruing from the earnings derived from the transportation of property in interstate commerce by railroad under said lease to the Junction Company, these defendants are not advised and neither admit nor deny the same, but demand strict proof thereof; and state the fact to be that all of such effects, if true, are merely incidental; and further say that the payment of moneys provided for in said agreement or contract has nothing whatever to do, nor was it, or is it intended to have anything to do with the transportation of property and the rates and charges therefor, and has no connection therewith whatsoever.

These defendants further answering say that they deny that the payment of the said money to them, or either of them, or to the said corporation, Louis Pfaelzer & Sons, will be a rebate and an unlawful discrimination and violation of the act to regulate commerce and deny that it will constitute a device whereby an undue advantage will be given to and an unlawful discrimination practiced in favor of them, or either of them, by the said Stock Yards Company; and further deny that such payment will constitute a concession, rebate, or

drawback and an unlawful discrimination whereby the property of them, or either of them, or of said Louis Pfaelzer & Sons, the
152 corporation, is by a device transported as interstate commerce over the lines of railroad owned by the Stock Yards Company at a less charge than is charged to other shippers for the same service; and these defendants deny that such payment will constitute a violation of the act of Congress approved February 19, 1903, and as amended June 29, 1906, commonly known as the "Elkins law."

These defendants further answering say that at no time during the negotiations conducted between them, or either of them, and the said Stock Yards Company subsequent to the proposition of such Stock Yards Company to pay to them the amount agreed upon and set out in said contract, was anything said to them, or either of them, with reference to the transportation of property of any kind or the charges to be exacted by said company from these defendants by any of the officers or agents of said Stock Yards Company, or anyone acting for it; nor is there any agreement or understanding expressed or implied on the subject whatsoever.

These defendants further answering say that prior to and until the 21st day of January, 1910, they were co-partners with Louis Pfaelzer, and were engaged in the business of buying, slaughtering, and selling for general consumption, slaughter house products, under the name and style of Louis Pfaelzer & Sons, in manner and form as set forth in Paragraph XIII of said bill of complaint, and that their place of business was located in the city of Chicago, county of Cook and State of Illinois, in what is known as the stock yards district, in the vicinity of the tracks operated by the Junction Company and the cattle pens of the Stock Yards Company, and that while
153 so engaged in business certain inspectors and investigators representing the Bureau of Animal Industry, a department of the United States Department of Agriculture (hereinafter referred to as "Agricultural Department"), in the course of the prosecution of their duties as such, visited and inspected the packing plant then operated by the said Louis Pfaelzer & Sons at a time early in the year 1907, and that after such inspection said Louis Pfaelzer & Sons received a notice in writing from the said Agricultural Department under date of March 30, 1907, directing them, the said Louis Pfaelzer & Sons, to make certain charges, replacements, and improvements, the making of which changes, replacements, and improvements necessitated the expenditure of large sums of money.

These defendants further answering say, that the said Louis Pfaelzer & Sons endeavored to and did comply with said notice in writing, under said date, and that thereafter, to wit, on the 22nd day of October, 1908, they received a further notice in writing from the said Agricultural Department, in substance, to the effect that they, the said Louis Pfaelzer & Sons, were directed to take immediate steps to provide a new establishment for their business, which would meet with the requirements of the regulations of the said Agricultural Department, and that upon receipt of said notice said

Louis Pfaelzer & Sons endeavored to secure a suitable site for the erection of an establishment which would meet with the requirements of the regulations of the said Agricultural Department; that to comply with the said direction of the said Agricultural
154 Department it would become necessary to destroy the entire plant then occupied by the said Louis Pfaelzer & Sons, which would thereby cause the said Louis Pfaelzer & Sons to sustain great loss; that shortly after the receipt of said notice and on, to wit, the 8th day of January, 1909, said Louis Pfaelzer & Sons received a further notice in writing from the Honorable James Wilson, Secretary of the Department of Agriculture of the United States, to the effect that on and after the 10th day of April, 1909, Government inspection of the products of said Louis Pfaelzer & Sons would be denied to said Louis Pfaelzer & Sons.

These defendants further answering say, that the carrying into effect of such order of the said Secretary of the United States Department of Agriculture would mean, in effect, the total destruction of their entire business; that thereupon the said Louis Pfaelzer & Sons called upon the officers of the Stock Yards Company for financial assistance in the matter of the erection of a new and modern packing plant, and that the said Stock Yards Company refused to the said Louis Pfaelzer & Sons the financial assistance so sought; that said Louis Pfaelzer & Sons, in order to protect the business already established by them in the city of Chicago and in the various States of the United States of America, took steps to secure a site for the erection of a new packing plant in the city of Kansas City, Missouri, they being unable to secure a proper and suitable site for the erection of such plant, in the city of Chicago, in said Stock Yards district, without paying therefor so large a sum of money as to make it doubtful as a matter of business ex-
155 pediency to expend; that shortly thereafter the Stock Yards Company, by its officers and agents, being informed of the proposed removal of the packing plant of said Louis Pfaelzer & Sons to Kansas City, Missouri, negotiations between these defendants and said Stock Yards Company were resumed and as a result thereof said Stock Yards Company agreed with the said Louis Pfaelzer & Sons that if they would remain within the district known as the Stock Yards district and erect a packing plant contiguous to and in the vicinity of the cattle pens of the Stock Yards Company they, the said Stock Yards Company, would contribute towards the erection of such packing plant the sum of $50,000 in cash; that relying upon the good faith of this arrangement the said Louis Pfaelzer & Sons abandoned their plans for the erection of a new packing plant in Kansas City, Missouri, and proceeded to and did purchase a large amount of real estate in the said Stock Yards district, paying therefor the sum of twenty-nine thousand seven hundred and fifty-five ($29,755) dollars; that said Louis Pfaelzer & Sons employed the services of competent engineers and architects to prepare plans for the proposed buildings, which said plans have been

prepared and have been submitted to and revised and accepted by the said Agricultural Department.

These defendants further answering say that they are the sole stockholders and sole directors of the corporation named and styled Louis Pfaelzer & Sons, which said corporation is the successor to the copartnership heretofore existing between these defendants, and
156 that David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer are the president, vice president, and secretary-treasurer, respectively, of said corporation; that these defendants, relying upon the good faith of the said Stock Yards Company to carry into effect the provisions of the said contract, entered into another certain contract with the Ralph and Sumner Sollitt Company, general contractor, for the erection of the buildings to compose the packing plant, in accordance with the plans and specifications hereinbefore referred to, and agreed to pay under said contract to said Ralph and Sumner Sollitt Company, for the erection and construction of said packing plant, two hundred and twenty thousand ($220,000) dollars; that said building is in course of erection and nearing completion and that said corporation has caused to be issued its certain bonds in the total sum of one hundred and twenty-five thousand ($125,000) dollars, the payment of which bonds is secured by a trust deed to A. S. Peabody, trustee, covering the property of the said corporation, and that these defendants, as individuals, relying upon the good faith of the said Stock Yards Company and its purpose to carry out the agreement set up in said contract marked "Exhibit E" guaranteed the payment of said bonds so issued at the various maturities thereof.

These defendants further answering say that the entering into said contract by them, or either of them, or by the said corporation, Louis Pfaelzer & Sons, is not a violation of any act of Congress in such case made and provided.

These defendants aver that the said corporation, Louis
157 Pfaelzer & Sons, is the successor of the partnership formerly conducted by the e defendants under and by virtue of the arrangement provided for in said "Exhibit E," and these defendants admit that unless restrained by the order of this honorable court they will cause said corporation to execute said contract known as "Exhibit E" and to carry out the terms and provisions thereof for and on behalf of these defendants.

* * * * * * *

That at and long prior to the time of the making of said contract for the payment of $50,000 there were stock yards located in various cities of the West and Southwest, namely, at Chicago, Illinois; Milwaukee, Wisconsin; Sioux City, Iowa; Omaha, Nebraska; St. Joseph, Missouri; Kansas City, Missouri; St. Louis, Missouri; East St. Louis, Illinois; Fort Worth, Texas; Dallas, Texas; St. Paul, Minnesota; Denver, Colorado; Oklahoma City, Oklahoma, at which were located large packing and slaughtering plants, which consumed live stock and furnished a market for the same.

That it has been customary with all of the respective owners of such stock yards, for the purpose of building up and retaining a market, to assist persons and corporations by way of donations, land or money, or both, to locate packing and slaughtering and other plants, which not only benefited such stock-yards owners, but also was of great value to the stock raisers of the contiguous district and equalized the handling of stock throughout the country, by furnishing various convenient places of slaughter and preparation for the market.

158 That as an illustration of the extent to which this custom is followed these respondents aver that within the past year the owners of the yards at Oklahoma City paid to a large packer the sum of $750,000 to locate a slaughterhouse at such yards.

As a further illustration respondents aver that several years ago the said Stock Yards Company at Chicago gave to a packer land for a plant and $500,000 in cash. That this practice and custom has existed for many years and is the result of competition between and among the several cities having stock yards industries.

That these respondents aver, on information and belief, at the time when it became necessary for these respondents to build a new plant or cease business, they could have obtained from the owners of the stock yards at Kansas City $200,000 to locate at that place.

That the slaughtering business at Chicago is conducted by about twelve persons and corporations, of which six do about 95%, and of the remaining 5% these respondents do about 1% of the total business.

That some one or more of the so-called "big six" doing 95% of the business as aforesaid have plants at all of the places above named and by reason of their size and facilities and diverse locations are able to exercise a great control of the market in all places, and but for the competition of the smaller packers, like these respondents, would exercise an almost absolute control over prices, and a substantial monopoly.

That these respondents do not, nor does their successor, pay
159 any freight to railroads whatever, except that in certain months of each year they are usually unable to get a high enough grade of beef for their trade in Chicago, and therefore buy in the Kansas City market in those months cattle by the carload, which they ship to Chicago and kill at their said plant, and occasionally purchase a few hogs, and sometimes lambs, in the Louisville, Ky., market; that the freight paid for this service in the five years last past was for cattle $10,911.61, for lambs $3,099.05, for hogs $169.34, making a total of $14,180, or a yearly average of $2,836 paid to the Chicago Junction Railway. That otherwise respondents substantially pay no freight.

That all coal, salt, and supplies are furnished at a lump price by weight f. o. b. cars at the plant, and any freight paid therefor is by respondents as agents of the seller and deducted from the lump sale price on settlement.

That in the past almost the entire product of the plant, excepting by-products, has been sold to the local city trade, and not handled

by rail; that the freight on whatever shipments are made is paid by the consignee and not for or by these respondents or their successor.

That the establishing of the plant of these respondents at the yards takes up about 125 feet of side track and there is much other property available for other plants on the side tracks and switches of the said Stock Yards Company.

That said $50,000 is to be paid solely as an assistance to the erection of said new plant and enters into the capitalization thereof, and was and is purely a legitimate business transaction, promoting the
160 interests of these respondents, the Stock Yards Company, the railroads, the stock raisers, the labor market, and the retail butcher and consumer.

* * * * * * *

XIV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XIV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XV.

These defendants further answering say that they are not advised as to any or all of the averments contained in Paragraph XV of said bill of complaint, and neither admit nor deny the same, but demand strict proof thereof.

XVI.

Further answering, these defendants say that the copartnership heretofore existing between David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer is no longer engaged in the business set out in Paragraph XIII of said bill of complaint or in any business whatsoever.

161 XVII.

Further answering, these defendants deny that the complainants are entitled to the relief prayed for, or any part thereof, against them or either of them, and so having answered the said bill of complaint these defendants pray to be hence dismissed, with their costs in this behalf most grievously sustained; and these defendants will ever pray, etc.

DAVID M. PFAELZER,
ABE PFAELZER,
JONAS L. PFAELZER,
By MCEWEN, WEISSENBACH, SHRIMSKI & MELDAN,
Their Solicitors.

WILLARD M. MCEWEN,
Of Counsel.

162 *Order that amended answer of David Pfaelzer et al. stand as answer of Louis Pfaelzer and Sons, a corporation.*

Entered May 22, 1911.

United States Commerce Court.

THE UNITED STATES OF AMERICA, upon application of the Attorney General at the request of the Interstate Commerce Commission, petitioner, *vs.* UNION STOCK YARDS & TRANSIT CO. et al., respondents.	No. 15.

Now comes the petitioner by the Attorney General, and also come the respondents by their respective counsel, and also comes "Louis Pfaelzer and Sons," a corporation of Illinois, by Willard M. McEwen, its solicitor, and thereupon on the motion of its said solicitor (the Attorney General consenting), it is ordered: That the answer as amended of David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer stand as the answer of Louis Pfaelzer & Sons, a corporation as the successor of the co-partnership Louis Pfaelzer and Sons, and conducting the business of slaughtering, etc., as heretofore carried on by said copartnership.

MARTIN A. KNAPP,
Presiding Judge.

163 *Journal entry.*

Proceedings of May 22, 1911.

UNITED STATES OF AMERICA, EX REL. ATTORNEY GENERAL, petitioner, *vs.* UNION STOCK YARD & TRANSIT CO. ET AL., RESPONDENTS.	No. 15.

* * * Thereupon, said cause came on to be heard on the bill of complaint and answers: Mr. William E. Lamb, Esquire, special assistant to the Attorney General, appearing on behalf of the United States.

164 *Journal entry.*

Proceedings of May 23, 1911.

UNITED STATES OF AMERICA, EX REL. ATTORNEY GENERAL, petitioner, *vs.* UNION STOCK YARD & TRANSIT CO. ET AL., RESPONDENTS.	No. 15.

Said cause came on for further hearing before the court, and the arguments of counsel were concluded: William E. Lamb, Esquire,

and Blackburn Esterline, Esquire, special assistants to the Attorney General, appearing on behalf of the United States; Ralph M. Shaw, Esquire, William D. Guthrie, Esquire, and Willard M. McEwen, Esquire, on behalf of the respondents. Mr. Esterline was given five days within which to file brief; and Mr. Shaw was given five days after receipt of Mr. Esterline's brief to file brief in reply. Thereupon, said cause was taken under advisement by the court.

165 *Opinion.*

Filed November 14, 1911.

United States Commerce Court.

UNITED STATES EX REL. ATTORNEY GENERAL
v.
UNION STOCK YARD AND TRANSIT CO. ET AL. } No. 15—May session, 1911.

On petition and answer.

Mr. Blackburn Esterline and Mr. William E. Lamb, special assistants to the Attorney General, with whom Mr. James A. Fowler, assistant to the Attorney General, was on the brief, for the United States of America.

Mr. Ralph M. Shaw, with whom Mr. John Barton Payne and Mr. Silas H. Strawn were on the brief, for Union Stock Yard and Transit Company of Chicago and for the Chicago Junction Railway Company.

Mr. W. D. Guthrie for the Chicago Junction Railways and Union Stock Yards Company.

Mr. Willard M. McEwen for Louis Pfaelzer & Sons.

Before Knapp, presiding judge, and Archbald, Hunt, Carland, and Mack, judges.

166 [Nov. 14, 1911.]

Mack, judge.

This proceeding is brought to compel the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stock Yard Co.") and the Chicago Junction Railway Company (hereinafter called the "Junction Co.") to file with the Interstate Commerce Commission tariffs in conformity with section 6, and reports and statements in conformity with section 20, of the act to regulate commerce (act of Feb. 4, 1887, as amended June 29, 1906; 34 Stat., 586 and 593) and of the rules and regulations adopted by the Commission pursuant thereto, and to enjoin the Stock Yard Co. and the individual defendants comprising the firm of Louis Pfaelzer & Sons (hereinafter called "the Pfaelzers") from carrying out the terms and provisions of a contract made by them, and the Chicago Junction Railways and Union Stock Yards Company (hereinafter

called the "Investment Co.") from carrying out its written guaranty of this contract.

The case has been heard on petition and answer. While the answers of the Stock Yard Co. and the Investment Co. neither admit nor deny certain allegations as to the activities of the Junction Co., which the latter in its answer admits to be true, and while no testimony has been offered in the case, it has been presented, both in the briefs and oral arguments by all counsel, on the basis of the truth of those allegations that are so confessed by the
167 Junction Co. We have, therefore, considered the petition, as against each defendant, in this light.

Although the petition is clearly multifarious in joining mandamus proceedings, authorized by the act to regulate commerce, to secure compliance with its provisions, and injunction proceedings, authorized by section 3 of the act to further regulate commerce known as the Elkins Act (act of Feb. 19, 1903, 32 Stat., 848), to restrain an alleged illegal rebate and discrimination, inasmuch as defendants do not raise this objection, we shall, without approving such practice, proceed to a determination of the petitioner's rights under both aspects of the case.

The Stock Yard Co., a corporation organized in 1865 by a special but public act of the State of Illinois, was thereby authorized not only to maintain stockyards and a hotel, but also to construct and maintain railway lines, tracks, and switches so as to connect its yards, then outside of the city of Chicago, with the tracks of all railroad lines entering Chicago within prescribed limits; to maintain the railroad, and to transport and allow to be transported thereon, between such railroads themselves as well as between its yards and such railroads, property of every kind; to fix the rates of toll, provided "all fees and charges for freight * * * shall be subject to any general law * * * in reference * * * to railroads." It was further authorized to maintain its lines
168 of railway across public streets and highways, and was given power of condemnation.

The act provided that nothing therein contained should be construed as giving authority to maintain or operate a railroad for the conveyance of passengers or freight in the city of Chicago; but since 1865, the date of the charter, the city of Chicago has been extended so as to cover all of the property of the Stock Yard Co.

It was further authorized by the charter to lease its property. Pursuant to this authority, it entered into an agreement with the Junction Co., a corporation organized under the general railroad act of the State of Illinois, whereby, in 1897, it, in effect, leased to the Junction Co. all of its railroad and railroad equipment for a term of 50 years. Under the agreement the Junction Co. obligated itself to conduct, operate, and manage the property; to perform all duties pertaining to a railroad, or of a railroad character, imposed upon the Stock Yard Co.; and to pay, as rental, two-thirds of the

entire net earnings and revenue derived by it from the operation of all its lines of railroad and railroad track.

The Junction Co. further obligated itself to submit its books and papers showing its operations to the nominee of the Stock Yard Co.

The Junction Co., at the time of the lease and for ten years thereafter, was the owner of other railroad property, and was concededly a commmon carrier within the act to regulate commerce. In
169 1907, however, it sold all of its other property. Since that time its sole business has been the operation of the railroad so acquired from the Stock Yard Co., lying wholly within the State of Illinois, in substantially the same manner as it had been operated, prior to the lease, by the Stock Yard Co.

The line of road consists of certain main tracks, running east and west from a point on the lake front in the city of Chicago near the intersection of Thirty-ninth Street with the tracks of the Illinois Central Railroad, and thence in a general westerly and northwesterly direction to a point some eight and a quarter miles distant from the lake, all in the State of Illinois, its parallel main tracks between these points aggregating about forty miles. The Union Stock Yards are located about two miles from the lake front, and, in addition to connecting with these yards, the Junction Co. also has switch tracks to other industries located at or near there, aggregating some two hundred and fifty miles, by means of which main and switch tracks it serves in the neighborhood of six hundred and fifty (650) industries, all being in or near what is known as the stock yards district of Chicago.

According to the record in this case, the Junction Co. neither receives goods for carriage on its own account nor deals on its own account with shippers or consignees. It is not necessary for the purposes of this decision to enumerate all of its activities in
170 the operation of the road. Among them is the hauling of loaded cars on behalf of trunk-line carriers, by whom it is employed and paid, from such trunk lines to the industries on its tracks or to other trunk lines connecting with it. These cars are brought by the trunk-line carriers from points outside of the State destined to points in the district served by it or to points outside of the State. They are placed by the incoming trunk-line roads on what are known as the receiving tracks of the Junction Co., each car being marked with a transfer card giving the name of the consignee of the freight therein contained, and thus indicating its destination. The Junction Co. picks them up with its own motive power and transports and delivers either to the designated consignee or industry on its line, or, when destined to points beyond the State limits, to the proper outgoing trunk line. These cars are transported in one unbroken line of railroad carriage from the several points where they originate outside of the State over the line of the Junction Co. after their arrival at Chicago, to the railroad of the outgoing connecting carrier, and then to their points of destination

outside of the State; this is done without the intervention of the shipper or consignee, or the performance by either of them of any intermediate act or service; and they move in this way on through bills of lading, covering the whole distance traversed, as do those also which are consigned and delivered to consignees and industries on the line of the Junction Co. in the stock-yards district.

171 For the hauling or so-called switching service so rendered, the Junction Co. is paid by the trunk-line carriers which request the service a specified sum, according to an established schedule of tariffs or charges. For instance, for the switching of cars back and forth, to and from the receiving tracks of the various connecting trunk lines to the stock yards, or to the industries in that vicinity, the Junction Co. is paid a certain sum per car by the trunk-line carriers, and this it receives as a distinct switching charge, regardless of the commodity or character of freight in the car, its origin, destination, or the through-freight charge of the trunk-line carriers. No specific charge therefor is made to the shipper or consignee, either by the Junction Co. or by the trunk-line company; the trunk line is said to absorb the charge.

Since the lease of 1897, the Stock Yard Co. has had nothing whatever to do with the railroad or railroad business, which has been carried on exclusively by its lessee. It has confined itself, apart from the operation of the hotel, to conducting a stock yards business, with all which this involves and implies. It is not a dealer in cattle, but simply maintains a public market where all kinds of live stock can be bought and sold. As part of this business, it receives and cares for stock delivered by trunk line carriers at its docks and chutes, unloading them for a specific amount per car paid to it by the carriers.

172 The stock, so unloaded at its yards, is mostly stock consigned on through bills of lading to parties doing business in and around the stock yards or stock yards district, which has been transported by the carriers from points outside of the State to the stock yards or to points on the line of the Junction Co. It also loads onto cars furnished by the trunk-line carriers stock outbound from the yards, for which it similarly receives a fixed sum per car from the carrier for which it performs this loading service, the stock so loaded being generally consigned from owners and dealears doing business in and about the stock yards district and being moved on through bills of lading over the Junction Co. tracks to the tracks of the trunk-line carriers, which haul them to point of destination beyond the limits of the State. The Stock Yard Co. also loads and unloads live stock consigned to or shipped by industrial establishments located along the right of way of the Junction Co., for which service the trunk-line carrier that handles the shipment pays a fixed sum per car. By reason of these facilities and business arrangements both live and dead freight is moved in an unbroken line of railroad carriage on through bills of lading from points outside of the State of Illinois to the stock yards and industrial establishments located in that vicinity, and from such stock yards and industrial establishments to out-

side points. The Stock Yard Co., however, neither issues bills of lading for these shipments, whether through bills or others, nor participates in the freight rates charged by the carriers. It is
173 compensated solely in the manner indicated for the services which it performs. It does advance to the carriers, however, the freight charges due on bills of lading for stock delivered at the stock yards, collecting the same in turn from the consignees. But these advancements are made for the convenience and accommodation of its customers, the commission men, who buy and sell stock at its yards, and have nothing whatever to do with the charges which it makes for loading and unloading. These are paid by the trunk line carriers as a separate matter. As part of its stock yards business the Stock Yard Co. further frequently feeds and waters live stock in transit, for which it is similarly paid a fixed compensation by the carrier handling the stock to and from its yards. And it also feeds, beds, and waters live stock shipped to consignees doing business at or near its yards, for which it is paid by the commission men who are engaged at its yards in buying and selling cattle. It also frequently makes alterations and repairs in cattle cars, for which it is paid by the carrier requesting the service. And, finally, for the accommodation of its patrons, it has built and conducts a hotel in the neighborhood of its yards as empowered by its charter.

The Investment Co. is a corporation organized under the laws of the State of New Jersey solely as an investment company for the purpose, among other things, of holding stock of the Stock
174 Yard Co. It owns over 90 per cent of this stock as well as practically all of the stock of the Junction Co., but it owns none of the property of, and neither manages nor controls, either company, except in so far as its stock ownership enables it to elect their directors.

The contract between the Stock Yard Co. and the Pfaelzers in substance obligates the former to pay $50,000 to the latter in order to enable them to rebuild their packing plant at a specified place in the neighborhood of the Stock Yard Co.'s premises. In consideration thereof the Pfaelzers bind themselves to rebuild the plant, to conduct their business exclusively at the specified place, and either to buy all live stock slaughtered or packed by them in or within 200 miles of Chicago, for a period of fifteen years, at the yards of the Stock Yard Co., or, in lieu thereof, to pay it the same customary yardage, tolls, and charges that it would receive if such live stock were sent to its yards and there bought by them.

The questions presented on this record are:

First. Is the Junction Co. a "common carrier engaged in transportation of property by railroad from one State to another State of the United States" within section one of the act to regulate commerce and therefore subject to the provisions of sections 6 and 20 thereof?

Second. Is the Stock Yard Co. the owner of a railroad en-
175 gaged in interstate commerce within such section 20 and therefore subject to its provisions?

Third. Is the Stock Yard Co. a common carrier within such section one and therefore subject to section 6 thereof and also to the provisions of section 3 of the Elkins Act?

Fourth. Is the Investment Co. such a carrier and therefore subject to section 3 of the Elkins Act?

Fifth. Are the contract and guaranty a violation of the act to regulate commerce or of the Elkins Act?

First. Counsel for the Junction Co. expressly concede in this case that it is a common carrier. They deny, however, that it is engaged in interstate commerce. Counsel for other defendants, while not expressly denying, nevertheless intimate that it is not a common carrier.

That it is a common and not a private carrier, if it be a carrier at all, is manifest from the fact that it is organized under the general railroad law of Illinois; under its constitution, article 11, section 12, all railroads are "declared public highways and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law." Moreover, it offers its services by the publication of a tariff in general circulation in Chicago to all the public who are in a position to avail them-
176 selves thereof. That the class is a limited one does not affect the nature of the business or render it any the less public or common in its character. It is, however, suggested that it is not a carrier at all because what it hauls is the loaded car, and not the freight itself with which the car is loaded.

That cars as well as other property may be the subject matter of carriage is, however, well established: P. & P. U. Ry. Co. v. C. R. I. & P. Ry. Co. (109 Ill., 135); M. P. Ry. Co. v. C. & A. Ry. Co. (25 Fed., 317); U. S. v. C. & N. W. Ry. Co. (157 Fed., 616, 619).

It is further contended that the trunk line alone is the carrier and that the Junction Co. is merely its agent and instrumentality, and only as such agent performing, not a transportation or carriage, but a mere switching service. This service is likened to that of a towboat, which, under some circumstances and in some jurisdictions, is held not to be a carrier.

That the trunk line has agreed to carry beyond its own line, and has expressly assumed a liability for the acts of connecting carriers, which, under the so-called Carmack amendment to section 20 of the act to regulate commerce (act of June 29, 1906, 34 Stat., 584, 595), the law would now impose upon it as the initial carrier, does not, however, render the connecting carrier any the less the transporter or carrier of the property while it is actually hauling the loaded car on its own tracks, with its own motive power and its own
177 servants, absolutely free from any control or direction on the part of either trunk line. To call this service a switching service does not, in any respect, change its character; whether the

work done be to switch a car 1 mile or to haul it 200 miles, it is none the less a transportation or carriage of the car and its contents by an independent operator. As was well said in M. P. Ry. Co. v. Grocery Co. (55 Kans., 525):

"A railroad transporting a carload of freight one mile, using a switching engine for motive power, is just as much a common carrier as if the distance were a thousand miles by regular freight train. The fact that compensation for this particular service was paid by the St. L. & S. F. Ry. Co., while it might render that company also responsible, could not relieve defendant company from its liability as a carrier."

If, then, it be a common carrier of this property, it must be immaterial how or by whom it is paid. Whether its rate is a flat one or a proportion of the through rate, whether it is paid by the trunk line and absorbed or by the shipper or consignee, does not determine the nature of its services or alter the character of its offer to the public—to serve them as a common carrier.

The Interstate Commerce Commission in Cattle Raisers' Association v. F. W. & D. C. Ry. Co. (7 I. C. C. Rep., 513, 536), while holding, as counsel urge, that this very Stock Yard Co., under which the Junction Co. holds by lease, was not, prior to the lease of 1897, a
178 common carrier in certain of its activities, also expressed the opinion, which counsel have not noted, that it was a common carrier with reference to the activities hereinabove described and now performed by the Junction Co. The commission, moreover, point out (p. 537) that the Bridge Co., in K. & I. Bridge Co. v. L. & N. Ry. Co. (37 Fed., 567), which is here relied upon, was not, under its act of incorporation, a common carrier at all.

In Union Stock Yards Co. of Omaha v. U. S. (169 Fed., 401), the Circuit Court of Appeals while holding, as counsel claim, that the Stock Yard Co. of Omaha was not a common carrier in its stockyards activities, also held that, as to its railroad activities, which are identical with those of the Junction Co., it was a common carrier engaged in interstate commerce within the safety-appliance law. On this point Mr. Justice Van Devanter said:

"It is the contention of counsel for the Stock Yards Company that the service performed by it is such only as the railroad companies are bound to perform for their patrons; that having no facilities for performing this service at South Omaha, the railroad companies merely employ the Stock Yards Company to furnish the requisite facilities and to operate them; that the performance of this service under such an employment does not make the Stock Yards Company a common carrier or its property used therein a railroad; and that this service is purely a local switching service which fol-
179 lows or precedes transportation, and is not interstate commerce. * * *

"It is of little significance that the stockyards company does not hold itself out as ready or willing generally to carry live stock for the public, for all the railroad companies at South Omaha do so

hold themselves out, and it stands ready and willing to conduct, and actually does conduct, for hire a part of the transportation of every live-stock shipment which they accept for carriage to or from that point, including such shipments as are interstate."

Belt Ry. Co. of Chicago v. U. S. (168 Fed., 542); U. S. v. Sioux City Stockyards Co. (162 Fed., 556); U. S. v. Union Stockyards Co. (161 Fed., 919); and the dictum in McNamara v. The Wash. Terminal Co. (39 Wash. Law Rep., 458) are in accordance with the decision of Mr. Justice Van Devanter, and hold a company performing these activities not only a common carrier but also engaged in interstate commerce within the safety appliance or employer's liability acts.

If, then, the Junction Co. be, at least as to some of its activities, a common carrier, is it also "engaged in the transportation of property by railroad from State to State"?

Its location wholly within one State, the switching nature of its activities, which are said to be merely incidental to the transportation within that State, and its failure to receive a division or definite percentage of the through inter-state rate, are urged in support
180 of the contention that it is not engaged in transportation from one State to another. Counsel, moreover, contend that the amendment of June 29, 1906, to the first section of the act to regulate commerce, narrows the class of railroads wholly within one State that are now subject to the act. Prior to the amendment, the act read: "Common carriers engaged in the transportation of property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment, from one State to any other State." By the amendment of 1906 the clause beginning "or partly" and ending with the word "shipment" was inclosed in parentheses.

It is urged that under the correct construction of the original section one, a railroad, even though wholly within one State, came within the act if it carried freight within that State under a common arrangement with an interstate carrier; but that, since under the amendment the common arrangement refers only to transportation partly by water and partly by rail, a carrier operating wholly by rail and within one State does not come within the amended act, even though it operate under such a common arrangement; in other words, that only railroads whose lines cross State boundaries are now subject to the Commission.

The case of C. N. O. & T. P. Ry. Co. v. I. C. C. (162 U. S., 184) does not, however, sustain the contention that prior to the amendment the clause "under a common control," etc., affected as
181 well the carriage wholly by railroad as the carriage partly by railroad and partly by water. (U. S. v. Colo. & N. W. Ry. Co., 157 Fed., 321, 329, 332.)

Whatever be the true construction of section one as originally framed—and we agree with the Circuit Court of Appeals in U. S. v. Colo. & N. W. Ry. Co. (157 Fed., 321, 327), that "it is probable that

the clause 'under a common control, etc.,' qualified carriers 'partly by railroad and partly by water' only, and had no application to such carriers 'wholly by railroad'"—it is clear that the sole purpose of the amendment was to remove any possible doubt on this point and not to withdraw from the operation of the act railroads wholly within one State, but engaged in the transportation of articles while moving in interstate commerce, whether with or without a common arrangement with connecting lines. (U. S. v. C. & N. W. Ry. Co., supra, at 328.)

The interstate commerce begins with the shipment of the article from one State directed and destined to another State. It ends only with the delivery at destination. All common carriers by railroad which participate in its actual transportation from the time of shipment to the time of delivery are engaged in the transportation of property from one State to another, whether their services be performed wholly within one State or in more than one State, whether such services be primary and called carriage or incidental and called switching, whether the carrier be paid a flat sum per
182 car or a percentage of the through rate, and whether such payment be made directly by the shipper or consignee on the one hand or by the initial or final carrier on the other hand. (U. S. v. Ill. Term. Ry. Co., 168 Fed., 456; Pac. Coast Ry. Co. v. U. S., 173 Fed., 448.)

While it is conceded that the cases above cited support these views, at least when the safety-appliance acts are in question, it is sought to distinguish most of them on the ground that the safety-appliance acts and the interstate commerce act have a different purpose and scope; that the former are intended primarily to regulate the cars at any time used in interstate commerce, and not primarily the carriers themselves in their relation to the public. Some statements from the decision of Judge Sanborn (U. S. v. C. & N. W. Ry. Co., 157 Fed., 321) to the effect that the two acts are not in pari materia, and therefore not necessarily to be construed alike, are cited in support of this contention. The argument, however, which was answered in that opinion, was as follows: The original interstate commerce act subjected to the control of the Interstate Commerce Commission a carrier by railroad within one State only if it operated under a common arrangement with a carrier in another State. That act was passed in 1887. In 1893 the first safety-appliance act was passed. In terms it applied to every "carrier by railroad engaged
183 in interstate commerce." Nevertheless, as it, too, subjected carriers to the control of the commission, the broad language must be deemed limited to the class of carriers affected by the act of 1887, because the act of 1887 clearly declared the intent of Congress as to the extent of the class over which the commission should have control.

The answer to this argument, given by the court, was twofold: First, the major premise, though adopted by some courts, was erroneous: all common carriers engaged in interstate transportation wholly

by railroad were embraced within the terms of the original act to regulate commerce. Second, even if it were correct, there was no such relation between the two acts as to cause the court to modify the broad language of the safety-appliance act by expressly inserting therein the limitation of the interstate-commerce act.

It is manifest that this decision does not support the contention of counsel.

Again it is said that the safety-appliance act as now amended (act of Mar. 2, 1903, 32 Stat., 943) requires all cars engaged in interstate commerce, whether owned by an interstate railroad or by a private individual not engaged in the transportation business, to be equipped as therein directed. But whatever the scope of the act may be (So. Ry. Co. v. U. S., U. S. Sup. Court, Oct. 31, 1911), only the "common carrier engaged in interstate commerce" is punishable for its violation. Cases holding companies whose activities are the same
184 as those of the Junction Co., guilty of such a violation, are therefore direct authorities on the question now under consideration.

As therefore the designation used in the several acts, "carrier engaged by railroad in interstate commerce" and "carrier engaged by railroad in the transportation of property from one State to another" are not mutually exclusive, but, on the contrary, the one includes the other; as all of the authorities cited to or found by us expressly hold that such of the activities of the Junction Co. as are hereinabove set forth make it a common carrier engaged in interstate commerce by railroad; we are of the opinion that it is a common carrier engaged in the transportation of property from one State to another, within section 1 of the act to regulate commerce, and as such subject to the requirements of section 6 and section 20 of that act.

Second. By the amendment of June 29, 1906, the commission was authorized, under section 20, to require annual reports, not only "from all common carriers subject to the provisions of this act," but also "from the owners of all railroads engaged in interstate commerce as defined in this act." This is the only section of the act that refers to the owners of the railroad as distinguished from the common carrier. The evident purpose of Congress was to enable the commission to obtain certain information which the lessee operator might be unable to give, but which the owner of a railroad,
185 either operated by a common carrier engaged in interstate commerce as defined in the act or which is a highway of interstate commerce, could furnish. Whichever be the true construction of this clause (So. Ry. Co. v. U. S., supra) the Stock Yard Co., as lessor, is the owner of such a railroad, and therefore comes within the provisions of section 20. What the obligations are which that section imposes upon such owners, we are not now called upon to decide.

Third. None of the present activities of the Stock Yard Co. as the owner and manager of the stock yards and hotel business, hereinabove fully detailed, in our judgment, make it a common carrier. The facilities which it affords may enter to a certain extent

into the carriage of live and dead stock by the railroads with which it has occasion to deal. And the services which it renders in that connection may take on a public character. (Cotting v. Kansas City Stock Yards, 183 U. S., 79, 85.) But that does not affect the case. A carrier must transport or carry. It must actually engage, in other words, in the carriage of goods or persons from point to point, of which there is no semblance in anything which is done here. (Union Stock Yards v. U. S., 169 Fed., 404, 406.)

It is said, however, that the charter of the Stock Yard Co. contemplated that it should build and operate a railroad to connect with the trunk lines which enter Chicago, and empowered it so to
186 do; and that it can not escape this charter obligation or put off the character of a common carrier thereby impressed on it, either by not exercising the power or by turning over to another company the railroad which it built. The corporate character of a company—and much less the business in which it is engaged—is not determined by its reserved and unused powers. (Tiffany v. La Plume Condensed Milk Co., 141 Fed., 444; Cate v. Connell, 173 Fed., 445.) It is what it does, and not simply what it may do, by which it is to be judged. A corporation would in no sense be a common carrier if it never constructed or ran a railroad or other means of transportation merely because it had the charter power. But the Stock Yard Co. did exercise such power; it built and operated the railroad. It was, at that time, a common carrier. (Cattle Raisers' Ass'n v. F. W. D. C. Ry. Co., supra.) It has, however, pursuant to its charter power, leased its entire railroad property. Thereupon the railroad, with the locomotives and cars required to run it, went out of the possession and control of the Stock Yard Co., which thereafter confined its operations to the stock-yard business under its other charter powers. Clearly the mere reversionary ownership of the railway, which it retained, did not make it a carrier or impose upon it the obligations or duties of a carrier.

While under the law of Illinois (Penn. Co. v. Ellett, Admr., 132 Ill., 654), and of some other States, a lessor is liable like a common carrier for damages caused by its lessee, an independent operating company, the weight of authority appears to be con-
187 trary to this view. (1 Elliott on Railroads, sec. 468.) In any event, the Federal courts in Illinois have refused to follow the Illinois doctrine (Yates v. Ill. Central Ry. Co., 137 Fed., 943; Curtis v. C., C., C. & St. L. Ry. Co., 140 Fed., 777) on the ground that this is a question of general law. Moreover, whatever may be the liability of a lesser railroad for damage to persons or property while being transported over the railroad owned by it but operated by a lessee, that liability, if any, is due to the obligations imposed upon it by the State. The State may declare that a non-operating lessor shall be liable to the same extent as a common carrier for such damages. It can not, however, by such a declaration make the lessor a common carrier in fact, within the meaning of the act to regulate commerce. Common carrier as therein used is to be taken in its ordinary signifi-

cation of the one engaged in the actual work of transportation; that is, the operating company. Any doubt that may theretofore have existed on this point is, in our judgment, removed by the amendment of 1906 to section 20 of the act, whereby, in express terms, the owner of a railroad engaged in interstate commerce is referred to in contradistinction to the common carrier subject to the act. The decision of the Interstate Commerce Commission in Independent Refiners' Ass'n. v. P. R. Co. (6 I. C. C. R., 52) in so far as it holds the lessor, merely as lessor, liable for the lessee's violation of it obligations under the interstate-commerce act is not to be supported.

188 The commission in that case, however, based the liability of the lessor also on the fact that it received as rental not a fixed annual sum, but one-half of the gross revenues. A holding of the Circuit Court for the Western District of Pennsylvania, in accordance with this ruling of the commission, that lessor and lessee thereby were to be deemed in a sense joint operators, was, however, reversed in the Circuit Court of Appeals. (Western N. Y. & P. R. Co. v. Penn Refining Co., 137 Fed., 343, 356.) There would seem to be no difference in the relation between a lessor and a lessee when, as in that case, the rental is a percentage of the gross receipts, and when, as in this case, the rental is a percentage of the net receipts. The test of a joint operation by lessor and lessee corporations, like that of a partnership between individuals, is not a sharing merely in the net profits of the enterprise. (Holmes v. Old Colony R. R. Co., 5 Gray, 58.) The Stock Yard Co. can not be deemed a joint operator with the Junction Co., and therefore a common carrier within the act to regulate commerce, merely because it receives two-thirds of the net revenues of the Junction Co. or because its auditor acts for both companies.

Even if the Investment Co., by reason of its ownership of the stock of the Junction Co., could be held to be in such control of the Junction Co. as, for some purposes, to make the two identical, nevertheless, the Stock Yard Co. would not thereby, and through the

189 ownership by the Investment Co. of 90 per cent of its stock, become a common carrier. It was the common carrier's ownership of 99 per cent of the stock of the Wharf Co., organized for the very purpose of furnishing it terminal facilities as a part of the interstate system, that, in Southern Pacific Terminal Co. v. I. C. C. & Young (219 U. S., 499), was held to make the Wharf Co. a part of the common carrier's system and, therefore, a common carrier subject to the act. We see no analogy to the situation in this case.

Fourth. The Investment Co., whatever may be its control over the Junction Co. or the Stock Yard Co., can not in any sense be deemed a common carrier. Its ownership of the entire stock of the Junction Co. would not make it, any more than such ownership would make an individual, a common carrier. It might be termed, in a sense, the owner of a common carrier, but, as it is not itself a common carrier, it does not, in our judgment, come within section 1 of the interstate-commerce act, or section 3 of the Elkins Act.

Fifth. While section 1 of the Elkins Act as amended (act of June 29th, 1906, 34 Stat., 584, 587), after prohibiting "any person or corporation" from rebating or discriminating in respect to an interstate transportation, subjects to criminal prosecution "any person or corporation, whether shipper or carrier," who knowingly violates its provisions, section 3 of the Elkins Act, under which this suit is brought, authorizes equity proceedings to enjoin such of-
190 fenses only when a "common carrier" has committed or is about to commit them. If the decision in I. C. C. v. Reichman (145 Fed., 235) correctly holds that one who is neither shipper nor carrier can be prosecuted under section 1—as to which we intimate no opinion—the question whether the proposed payment to the Pfaelzers could in any way be deemed such a rebate or discrimination could be tested by proceedings thereunder in the proper forum.

We have found it unnecessary to determine or even to consider it, in view of our conclusion that neither the Stock Yard Co. nor the Investment Co. is a common carrier.

Section 6 of the interstate-commerce act imposes a positive duty on common carriers subject thereto in respect to the filing of tariffs and other documents. Section 20, on the other hand, merely authorizes the commission to require reports from common carriers and owners of railroads engaged in interstate commerce. There is no allegation in the petition filed in this cause that the Interstate Commerce Commission in any manner, either by general or special order or otherwise, has ever required the Junction Co. or the Stock Yard Co. to furnish any such reports as are contemplated under section 20. In the absence of such an order no mandamus to make such reports can be issued by this court.

It follows, therefore, that the petition must be dismissed,
191 not only as against defendants other than the Junction Co. and the Stock Yard Co., but also as against the Stock Yard Co., and the relief prayed for under section 20 of the act must be denied as against the Junction Co.

The mandatory writ will be issued against the Junction Co., as a common carrier subject to the act, to comply with its obligations under section 6 thereof.

ARCHBALD, *Judge*, dissenting in part.

The petition is well dismissed as to the three respondents, with respect to whom it is found that neither the Elkins nor the interstate commerce act apply. It is held, however, that the Junction Railway Company is a common carrier engaged in interstate commerce and therefore liable to publish tariffs and to make reports, and as to this I feel compelled to dissent.

Nothing of the kind can be predicated on the use which the Junction Railway Company permits of its tracks by the trunk-line carriers as a connecting link, to haul by their own motive power through trains moving from one to the other, east or west. In the loan of

its tracks for this purpose, however regular or persisted in, it is not exercising any of the functions of a common carrier, even though it take tolls therefor, any more than a turnpike road, upon which people travel; or a toll bridge spanning a stream, which accommodates those who go across; or a canal, which, without doing any towing, merely maintains a waterway for public use. (Moore
192 Carriers, p. 66, 67; Kentucky & Indiana Bridge Co. *v.* Louis. & Nash. R. R., 37 Fed., 573, 615; Grigsby *v.* Chappell, 5 Rich. (S. C.), 443.) The traffic which, by leave of the Junction Railway Company, goes on over its tracks in this way is that of the trunk lines using them and not of the Junction Railway. The charges for through carriage, including this part of the movement, are made by and paid to these lines, and the Junction Railway does not participate by division or otherwise therein. Neither does it know or come in contact with the shippers or consignees or with the freight which is so moved. It simply lets its road and gets pay for its use at so much a car, which neither makes it a carrier nor constitutes an engagement by it in interstate trade.

Neither is there anything to make it a common carrier in what it does at the Union Freight Station, which it maintains, in the way of receiving, distributing, and forwarding L. C. L. freight. So far as it acts with respect to this for the Baltimore & Ohio Railroad it acts as the local agent of that company, and is not chargeable in any larger degree. The receiving, loading, and forwarding which it does for others, including the collection of freight charges, when required by the trunk-line carriers to be prepaid, and the giving of receipts which are exchangeable for bills of lading therefor, may be of a somewhat more general character. But in no respect do they amount to a transportation of such freight by the Junction Railway
193 on its own account, nor does the Junction Railway Company in any sense act as a common carrier with respect thereto. It merely serves as a receiving and forwarding agent, for which it is compensated by the trunk line carriers by which its services are invoked. Having no concern as such agent in the transportation of this freight, nor any interest in the freight rates charged, and the services being complete when rendered and confined to the mere handling of the freight in the act of receiving and forwarding it, there is nothing in any of this upon which a common carriage can be charged. (Moore Carriers, p. 68.) And the same is true also with regard to the weighing of freight which it does, even though these weights are at times made the basis of freight charges and adjustments between carrier and consignor or consignee. These activities are alluded to at this time, not only because they are set up in the bill, but because they are necessary to be considered in connection with the other things which it does in determining the character which the Junction Railway Company in fact bears, which, to the extent of these activities at least, is plainly that of a mere intermediary or local agency of the trunk-line companies for which the

services are performed. And this character, in all that it does, it consistently maintains.

The so-called hauling and switching services, however, remain. And for a full understanding of them they must be given somewhat at large. The practice in this regard with respect to live and
194 dead freight is not exactly the same. Where inbound live stock originates outside of the State and is destined to points in the stockyards district, the trunk line on which it arrives generally hauls it with its own motive power over the tracks of the junction railway from the connecting point to the unloading docks, chutes, and platforms of the stockyards company, although horses are usually delivered by the Junction Railway Company after having been received from the trunk line by which they are brought in. Outbound carload shipments of live stock, however, which originate in the stockyards district and are destined to points outside the State, after being loaded into cars placed by the Junction Railway Company at the loading chutes of the stockyards, are hauled by the Junction Railway over its tracks and delivered at the proper connecting point to the trunk line which is to transport them beyond. Dead freight in carload lots brought by the trunk-line carriers from points outside of the State, destined to points in the district served by the Junction Railway on the line of its tracks, and sometimes also destined to points beyond, is placed by the trunk-line roads on what are known as the receiving tracks of the Junction Railway, each car being marked with a card, giving the name of the consignee, by which its destination may be known. And these cars the Junction Railway Company picks up with its own motive power and delivers to the designated consignee or industry; or, where they are
195 destined to points beyond the State, delivers them to the proper connecting outgoing trunk line, according to the destination indicated thereon. Through shipments of this kind move on bills of lading covering the whole distance traversed, including the tracks of the Junction Railway. And the same is true of consignments to and from the Union Stockyards or the industries of the stockyards district adjacent to the railway company's line. But the Junction Railway Company is not known to the shipper or the consignee in the transaction, all that it does being done for the trunk-line carrier which employs it, by which it is paid so much a car. And this payment also it receives as a distinct switching charge, regardless of whether the car is loaded or empty, or where it is to go to or where it comes from. The question then is whether by reason of what it so does the Junction Railway Company is a common carrier engaged as such in the transportation of persons or property in interstate trade, within the meaning of the law.

It is claimed that it is because it participates in the movement of the freight which passes over its tracks in the channels of commerce in the way which has been described, in which movement, it is said, it is an integral and essential factor and not a mere local aid. (C. N.

O. & T. P. R. R. v. Inter. Com. Com., 162 U. S., 184.) But to me that does not seem to be the case. The part which it takes in that movement is a purely local and incidental one, in no respect
196 having anything to do with the movement of freight as freight, and much less as interstate freight, its services being confined to the mere handling of the cars in which the freight is contained, this being carried on and completed also wholly within the State, and not, in any respect extending to anything beyond. It knows no one outside of the trunk line carriers by which it is employed and does not come in contact or have any relation with the shipper or consignee except as agent of the trunk line carriers in the receiving and delivering of freight. Nor has it anything to do with the freight rates charged, the tolls which it gets being taken care of by the trunk lines without appearing in those rates. The service which it performs is a mere shifting or switching service, having no relation to anything outside of that so far as it is concerned. Its undertaking is to shift the cars and not the freight which they contain, in the movement of which freight it has no interest, and as emphasizing this it is paid by the car without regard to contents, origin, or destination, whether to or from points within or without the State. When the cars are being moved by the Junction Railway Company the carrier for which in each instance this is being done, in legal contemplation as well as in actual effect, is transporting them, the Junction Railway Company, by its engineers and employees, being merely the medium by which it is accomplished. To engage in transportation within the meaning of the law there must be a participation in the result;
197 to merely touch it in passing, as here, is not enough. The statute was enacted to regulate interstate commerce, and there must be a direct or proximate connection with interstate shipments to bring the case within its terms; and the mere local shifting or handling of cars in which the commodities move incidentally in transit, wholly within the State where it is done, without any share in the freight paid, the service rendered being performed for the carrier by which the through transportation is being done, is not, in my judgment, engaging in interstate commerce in the commodities or in the interstate transportation of them, with which alone the statute undertakes to deal.

It is no doubt true that railroads performing similar switching services to those which we have here have been held to be engaged in interstate commerce within the meaning of the safety-appliance law. (United States v. Col. & N. W. R. R., 157 Fed., 321; United States v. Union Stock Yards of Omaha, 161 Fed., 919; Belt Line R. R. v. United States, 168 Fed., 542; Union Stock Yards of Omaha v. United States, 169 Fed., 404.) But there is by no means a unanimity of opinion among the judges by whom these cases were decided, and, as is pointed out by Judge Sanborn in the leading one (United States v. Col. & N. W. R. R., 157 Fed., 321) the safety-appliance act is to be given a broader construction than the interstate commerce act, even though in the description of the carriers, who are

198 made subject to it, the same terms largely are employed in each: the one act dealing with the physical or mechanical instrumentalities of interstate commerce, looking to the safety of employees, while the other is directed to the business or commercial side, regulating the rates and practices which are there to prevail. These decisions therefore, as it seems to me, are misleading and valueless as precedents, and are not to be applied.

Neither is the case like that of MacNamara v. Washington Terminal Company (39 Wash. Law Rep., 458), recently decided by the District of Columbia Court of Appeals, on which much reliance is placed. The case there arose under the employers' liability act, the validity of which, so far as the District of Columbia is concerned, does not depend, as it is pointed out, on the right of Congress to legislate with regard to interstate or foreign trade; and the question simply was whether the Terminal Company was a common carrier engaged in trade or commerce in the District within the meaning of the law. Whether the Terminal Company, however, was engaged in interstate commerce was also held to be involved; and, passing upon that question, it was decided that it was. But the considerations which led to this result are to be observed. The tracks and station of the Terminal Company, it is to be noted, are not mere facilities for the handling of passengers and baggage at Washington.

As to the railroads entering the city, the Terminal Company
199 completely monopolizes everything that is done. By its agents and employees it controls the operation of trains over its tracks into and out of the station, and with its engines it shifts empty cars in the making up of trains. Steam railroad passenger traffic entering and leaving Washington is thus completely and exclusively managed, operated, and controlled by the Terminal Company within the zone occupied by its station and tracks. The conclusion reached, in view of this, was that it was not to be taken as a mere line of railroad, carried on wholly and independently within the District, but that it was a direct component part of the various railroad systems engaged in interstate commerce, through which an entrance into Washington was obtained. And it is this integral and indispensable part which it has in interstate trade coming into and going out of the city that is the criterion by which its position as a medium of interstate commerce is to be judged. It is, in other words, as with the Southern Pacific Terminal (219 U. S., 498), its relation to and systematic connection with the interstate railroads of which it forms the Washington end, and its direct participation in the handling and management of the passenger and express traffic there, that makes it a common carrier engaged in interstate commerce within the meaning of the Federal law.

The distinction between that case and the one in hand is clear. The Junction Railway Company was not organized to supply terminal facilities, nor does it in fact supply them, for any inter-
200 state railroad or business. Nor is it a component part of any such railroad system. Nor does it, in the hauling and switch-

ing services which it performs, take the place for the time being, as to consignor or consignee, of the trunk-line carrier for which it acts. It simply moves back and forth, by means of its engines and employees, cars which it is put by the trunk-line carriers in the way to take, to which carriers in the performance of that service it is alone responsible therefor. It is not an agency of commerce as such, State or interstate, but of the railroads which have that commerce in charge. It is true that it has a railroad which it operates, over which that commerce incidentally moves. But that does not change the character of the services in which it is engaged. The part which it plays, the relation which it assumes, and the result of what it does, begin and end, so far as it is concerned, with the immediate service which it renders, which negatives the idea that anything like interstate commerce is intended or involved. Not engaging as a common carrier in such transportation, it is not brought in consequence within the terms of the act and can not be required either to publish tariffs or to make reports. And the petition ought therefore, in my judgment, to be in all respects denied.

201 *Petition for re-argument.*

Filed Nov. 25, 1911.

United States Commerce Court.

UNITED STATES EX REL. ATTORNEY GENERAL
vs.
UNION STOCK YARD AND TRANSIT COMPANY ET AL. } No. 15. May session, 1911.

Petition for re-argument.

Now comes the defendant, the Union Stock Yard and Transit Company of Chicago, and petitions this honorable court to grant a re-argument or rehearing in the above entitled cause upon the point hereinafter mentioned and for the reasons hereinafter set forth.

1. The court failed to decide whether or not the payment of the bonus charged in the complaint from this petitioner to Pfaelzer was or was not prohibited by law. (Page 26 of opinion.)

2. Apparently the court placed its failure to decide this point upon the ground that it had no jurisdiction to make the decision.

3. This question was not raised by either the Government, or the Interstate Commerce Commission, or by the defendants in this cause, and neither party was given any opportunity to present the
202 question of jurisdiction to the court.

4. The question of jurisdiction not having been raised by either party or by the court upon the hearing, it is respectfully submitted that this petitioner is entitled to be heard thereon.

5. This petitioner respectfully submits that under sections 2 and 3 of the Elkins Act the court has in this proceeding the power to pro-

hibit the payment complained of by the Interstate Commerce Commission, if in the opinion of the court it be illegal.

On the other hand this petitioner insists that if the payment be not illegal (and this petitioner respectfully insists that it is not illegal) that it is the duty of the court to decide the question.

6. This defendant respectfully insists that the court by its decision has necessarily restricted the jurisdiction of the court far beyond the jurisdiction conferred upon it by the act.

7. This petitioner respectfully submits (as appears from the brief and argument of this petitioner) that the question which the court has failed to decide in this cause is a question of transcendent importance in the case and that it is the only proceeding wherein the legality of the payment complained of can be decided except in a criminal proceeding.

203 For each and every of the foregoing reasons, this petitioner respectfully petitions the court to grant a re-argument upon the point above outlined, and this your petitioner will ever pray.

Respectfully submitted.

UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO,
By R. M. SHAW,
Its Solicitor.

204 *Journal entry.*

Proceedings of Nov. 28, 1911.

UNITED STATES EX REL. ATTORNEY GENERAL, PETITIONER,
vs.
UNION STOCK YARD & TRANSIT CO. OF CHICAGO ET AL.,
respondents. } No. 15.

This cause now coming on to be heard on motion of the defendants for a re-argument of certain questions specified in their petition filed herein, it is hereby ordered that the said motion be and is hereby allowed, and the cause set for re-argument on the said points for the 6th day of December, 1911.

205 *Journal entry.*

Proceedings of Dec. 6, 1911.

UNITED STATES EX REL. ATTORNEY GENERAL, PETITIONER,
vs.
UNION STOCK YARD & TRANSIT CO. OF CHICAGO ET AL.,
respondents. } No. 15.

Said cause came on for rehearing before the court, and the arguments of counsel were concluded, Mr. Ralph M. Shaw appearing on

behalf of the respondents, Mr. Willard M. McEwen on behalf of Pfaelzer and Sons, and Mr. Blackburn Esterline and Mr. William E. Lamb on behalf of the United States. Thereupon the cause was taken under advisement by the court.

206 *Opinion on rehearing.*

Filed February 13, 1912.

United States Commerce Court.

UNITED STATES EX REL. ATTORNEY GENERAL
v.
UNION STOCK YARD AND TRANSIT CO. ET AL. } No. 15. October session, 1911.

On petition for rehearing.

Mr. Blackburn Esterline and Mr. William E. Lamb, special assistants to the Attorney General, for the United States.

Mr. Ralph M. Shaw for Union Stock Yard and Transit Co. of Chicago and for the Chicago Junction Railway Company.

Mr. Willard M. McEwen for Louis Pfaelzer & Sons.

Before Knapp, presiding judge, and Archbald, Hunt, Carland, and Mack, judges.

[February 13, 1912.]

MACK, *Judge*.

It is urged that this court, in the opinion heretofore filed, has too narrowly limited its jurisdiction in declining to consider
207 whether or not the proposed payment by the Stock Yards Company to the Pfaelzers is a rebate or discrimination forbidden by law.

Counsel contend that inasmuch as the Junction Co., which is alleged and has been found by us to be a common carrier engaged in interstate commerce, is one of the defendants, therefore, under section 2, as well as under section 3, of the Elkins Act, other parties not common carriers involved in the subject matter of the proceedings may likewise be proceeded against in the same action.

But, as we stated in the former opinion, two entirely separate cases have been joined in this proceeding, the one against the Junction Co. and the Stock Yards Co. to compel compliance with sections 6 and 20 of the act to regulate commerce; the other against the Stock Yards Co., the Investment Co., and the Pfaelzers, under the Elkins Act, to enjoin an alleged discrimination and rebate.

While we have not of our own motion dismissed the petition for misjoinder of actions and multifariousness, nevertheless we can not

deal with the case otherwise than as involving the two distinct causes of action. The fact that the Junction Co. is a party to the first of these does not make it also a party to the second. No relief of any kind is prayed for against it in respect to the alleged discrimination and rebate. If, as we interpret sections two and three of the Elkins Act, a proceeding thereunder in equity can not be maintained
208 against parties other than a common carrier engaged in interstate commerce, unless on proper allegations relief is also sought against the commission by such a carrier of one or more of the acts therein prohibited, the fact that the Junction Co., which is such a carrier, is a party defendant on the other branch of the case furnishes no basis for this proceeding against the other defendants.

But counsel further urge that, inasmuch as the Stock Yards Co. is, in good faith, alleged to be an interstate common carrier, this court not only has jurisdiction but is in duty bound to determine the legality of the contract with the Pfaelzers.

There is no question as to the jurisdiction of the court in the premises; the petition purports to state a case under the Elkins Act. If the defendants had admitted that the Stock Yards Co. was an interstate common carrier, the only question to be determined by this court would have been the legality of the contract. But when the defendants denied this allegation, they raised an issue of fact the determination of which necessarily preceded any consideration of the issue of law. When that issue of fact was decided in their favor the petition had to be dismissed.

The court nevertheless had the power and the right to base its decision on either or both of two possible grounds, and if we had been clearly of the opinion that such a contract as the one in
209 question, made by an interstate common carrier, were legal, the petition would have been dismissed on both grounds.

The only case stated, or that could properly have been stated in the petition, was one charging that an interstate carrier had made a contract in violation of the law. Defendants, however, are now asking us to decide a totally different question—whether or not such a contract made by one not a carrier is legal. However important it may be to them to secure an authoritative ruling thereon, any answer that we might give would not be responsive to the issues raised in the case before us, and would, therefore, be a mere dictum, and of no binding force.

No authority has been vested in this court to advise parties, on their application, whether proposed undertakings would, if consummated, violate the law, or, on the application of the Government, to enjoin the commission of alleged illegal acts, except only when such an injunction is sought against an interstate common carrier.

An order will therefore be entered in accordance with the original opinion filed herein.

210 *Final decree.*

Entered March 8, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, petitioner,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership, doing business under the firm name and style of Louis Pfaelzer & Sons; and Louis Pfaelzer & Sons, a corporation, successor to said copartnership, respondents.

No. 15. October session, 1911.

Final decree.

This cause having been transferred to the United States Commerce Court from the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois, came on for hearing on the petition filed by the petitioner in said Circuit Court as amended on the face thereof, the answer of Union Stock Yard and Transit Company of Chicago, a corporation; the answer of the Chicago Junction Railway Company, a corporation; the answer of the Chicago Junction Railways and Union Stock Yards Company, a corporation; and the secondly amended joint and several answer of David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership, doing business under the firm name and style of Louis Pfaelzer and Sons, which answer was ordered to stand also as the answer of Louis Pfaelzer and Sons, a corporation, successor to said copartnership, and the record and proceedings in said cause, and the same was argued by counsel and submitted to the court—

211 Upon consideration whereof, and the court having made and filed its opinion, it is now by the court ordered, adjudged, and decreed—

First. That the Chicago Junction Railway Company, a corporation, is a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

Second. That the Chicago Junction Railway Company, a corporation, as a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the

acts amendatory thereof and supplementary thereto, file with the Interstate Commerce Commission within sixty days from the date hereof such schedules and tariffs of rates, fares, and charges as may be lawful and proper and otherwise comply with the provisions of section 6 of the said act to regulate commerce.

Third. That the relief prayed for in the petition against the Chicago Junction Railway Company, requiring it, as a common carrier, engaged in commerce among the several States, to comply with section 20 of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and to file such reports and statements as may be required under the rules and regulations adopted by the Interstate Commerce Commission in conformity with the provisions of said section 20, be, and the same is hereby, denied.

Fourth. That the Union Stock Yard and Transit Company, a corporation, respondent, is not a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof and supplementary thereto, and that the said petition be, and the same is hereby, dismissed as to it.

212 Fifth. That the said petition be and the same is hereby dismissed as to the respondent the Chicago Junction Railways and Union Stock Yards Company.

Sixth. That the said petition be, and the same is hereby, dismissed as to the respondents, David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons and Louis Pfaelzer and Sons, a corporation, successor to said copartnership.

Seventh. That the contract and guaranty between respondents, David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, and the respondents Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railways and Union Stock Yards Company is not a subject or transaction over which this court has jurisdiction to hear and determine as a violation of the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or of any of them.

By the court.

MARTIN A. KNAPP,
Presiding judge.

To the entry of which said decree (except the first and second parts thereof) the United States, by its counsel, objects and excepts.

To the entry of which said decree the defendant, Chicago Junction Railway, objects and excepts.

213 *Petition for appeal of United States.*

Filed March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission, petitioner,

v.

UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, respondents. } No. 15.

Petition for appeal.

The United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, feeling itself aggrieved by the final order or decree of the Commerce Court, entered March 8, 1912, by its Attorney General, prays an appeal to the Supreme Court of the United States from all of the said final order or decree—

Except so much and such parts thereof as adjudge—

First. That the Chicago Junction Railway Company, a corporation, is a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

Second. That the Chicago Junction Railway Company, a corporation, as a common carrier subject to the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, file with the Interstate Commerce Commission within sixty days from the
214 date hereof such schedules and tariffs of rates, fares, and charges as may be lawful and proper and otherwise comply with the provisions of section 6 of the said act to regulate commerce.

Third. That the relief prayed for in the petition against the Chicago Junction Railway Company, requiring it, as a common carrier engaged in commerce among the several States, to comply with section 20 of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and to file such reports and statements as may be required under the rules and regulations adopted by the Interstate Commerce Commission in conformity with the provisions of said section 20, be and the same is hereby denied.

The particulars wherein the United States considers said final order or decree erroneous are set forth in the assignment of errors on file, to which reference is made.

And the United States prays that a transcript of the record, proceedings, and papers on which the said order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

GEORGE W. WICKERSHAM,
Attorney General of the United States.

215 *Assignment of errors by United States.*

Filed March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission, petitioner,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, respondents. } No. 15.

Assignment of errors.

Comes now the United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, by its Attorney General, and in connection with its petition for appeal, files the following assignment of errors on which it will rely upon said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court entered against it March 8, 1912, in the above-entitled cause.

The Commerce Court erred—

I.

In holding and adjudging that the Union Stock Yard and Transit Company, a corporation, is not a common carrier subject to the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

II.

In not holding and adjudging that the Union Stock Yard and Transit Company is a common carrier by railroad and subject to the provisions of an act entitled "An act to regulate commerce," approved

February 4, 1887, and the acts amendatory thereof and
216 supplementary thereto, and in not ordering it to comply with the same.

III.

In holding and adjudging that the Commerce Court is without jurisdiction over the Union Stock Yard and Transit Company, a corporation, under the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto and in dismissing the petition as to the said Union Stock Yard and Transit Company.

IV.

In holding and adjudging that the Commerce Court is without jurisdiction over the Chicago Junction Railways and Union Stock Yards Company and in dismissing the petition as to it.

V.

In holding and adjudging that the Commerce Court is without jurisdiction over David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons, and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, and in dismissing the petition as to them and each of them.

VI.

In holding and adjudging that the contract and guaranty between David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership, doing business under the firm name and style of Louis Pfaelzer and Sons, and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, and the Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railways and Union Stock Yards Company is not a subject or transaction over which the court has jurisdiction to hear and determine as a violation of the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto or of any of them.

217 VII.

In holding that the Union Stock Yard and Transit Company of Chicago was not a joint operator of the railroad with the Chicago Junction Railway Company under the agreement between them.

VIII.

In not holding that the payment of the amount of money to Louis Pfaelzer and Sons in accordance with the terms of the contract and guaranty will constitute, in effect, a rebate and an unlawful discrimination and will, in effect, constitute a device whereby an undue advantage will be given to and an unlawful discrimination will be prac-

*

ticed in favor of said Louis Pfaelzer and Sons by the said Union Stock Yard and Transit Company in the transportation of the property of Louis Pfaelzer and Sons in interstate commerce, and will, in fact, also constitute a concession, rebate, and an unlawful discrimination, whereby the property of the said Louis Pfaelzer and Sons is by device transported in interstate commerce at less charges than are exacted from other shippers for the same service between the same points and at less than the tariff charges thereto, in violation of the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

IX.

In not enjoining and prohibiting the execution and performance of the contract and guaranty between Louis Pfaelzer and Sons and Union Stock Yard and Transit Company of Chicago and Chicago Junction Railways and Union Stock Yards Company as a violation of the provisions of an act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

Wherefore the United States prays that the said final order or decree of the Commerce Court, entered March 8, 1912, be corrected and modified.

GEORGE W. WICKERSHAM,
Attorney General of the United States.

218 *Order allowing appeal of United States.*

Entered March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission, petitioner,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, respondents. | No. 15.

Order allowing appeal.

In the above-entitled cause the United States of America, upon the application of the Attorney General, at the request of the Interstate

Commerce Commission, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered March 8, 1912, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is hereby ordered, adjudged, and decreed that the said appeal be, and the same is hereby, allowed as prayed and made returnable on the 8th day of April, 1912, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which the said order or decree was made and entered to the Supreme Court of the United States.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

219 *Petition for appeal of the Chicago Junction Railway Company.*

Filed March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission,
v.
THE UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation, et al. } No. 15.

Petition for appeal.

The Chicago Junction Railway Company, respondent, feeling itself aggrieved by the final decree entered in the above-entitled cause on the 8th day of March, A. D. 1912, by its counsel prays an appeal to the Supreme Court of the United States from said final decree. The particulars wherein the Chicago Junction Railway Company considers said final decree erroneous are set forth in the assignment of errors herewith filed, to which refers is hereby made.

And the said Chicago Junction Railway Company further prays that a transcript of the record, proceedings, and papers on which said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Washington, D. C., March 9th, 1912.

RALPH W. SHAW,
Solicitor for the Chicago Junction Railway Company.

220 *Assignment of errors of the Chicago Junction Railway Company.*

Filed March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION OF the Attorney General, at the request of the Interstate Commerce Commission.
vs.
THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation, et al. } No. 15.

Assignment of errors.

Comes now the Chicago Junction Railway Company, a corporation, by its counsel, and in connection with its application for appeal files the following assignment of errors on which it will rely upon said appeal to the Supreme Court of the United States from the final order or decree of the United States Commerce Court entered on the 8th day of March, A. D. 1912, in the above-entitled cause:

1. The court erred in ordering, adjudging, and decreeing that the Chicago Junction Railway Company is a common carrier, subject to the provisions of an act entitled "An act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto."

2. The court erred in ordering, adjudging, and decreeing the Chicago Junction Railway Company to file with the Interstate Commerce Commission within sixty (60) days from the date of the entry of the decree, its schedules and tariffs of rates, fares, and charges.

3. The court erred in ordering, adjudging, and decreeing the Chicago Junction Railway Company to otherwise comply with the
221 provisions of section 6 of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto.

4. The court erred in that it did not find, order, adjudge, and decree that the defendant, the Chicago Junction Railway Company, is not a common carrier subject to the provisions of the act entitled "An act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto."

5. The court erred in that it did not find, order, adjudge, and decree that the petition of the United States upon the application of the Attorney General, at the request of the Interstate Commerce Commission, be dismissed.

RALPH M. SHAW,
Solicitor for defendant, Chicago Junction Railway Company.

222 *Order allowing appeal of the Chicago Junction Railway Company.*

Entered March 9, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission,
v.
THE UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation, et al. } No. 15.

Order.

In the above entitled cause, the Chicago Junction Railway Company having made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree of the United States Commerce Court entered the 8th day of March, 1912, and having at the same time made and filed an assignment of errors, and having in all respects conformed to the statutes and the rules of court in such case made and provided, it is ordered and decreed that the said appeal be, and the same is hereby, allowed as prayed and made returnable on the 8th day of April, 1912, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers to the Supreme Court of the United States.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

MARCH 9, 1912.

223 *Præcipe for record.*

Filed March 27, 1912.

In the United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Inter-State Commerce Commission, petitioner,
v.
UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, a corporation; the Chicago Junction Railway Company, a corporation; the Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership, respondents. } No. 15.

Præcipe for record.

To the clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeals from the final order or decree of the Commerce Court entered March 8, 1912, and include in said transcript the following pleadings, proceedings, and papers on file or of record, to wit:

Petition and exhibits.

Chancery subpœna.

Appearance of David Pfaelzer et al.

Appearance of Chicago Junction Railways and Union Stock Yards Company.

Appearance of Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railway Company.

Answer of Union Stock Yard and Transit Company.

Answer of Chicago Junction Railway Company.

224 Answer of Chicago Junction Railways and Union Stock Yards Company.

Joint answer of David Pfaelzer et al.

Amended joint answer of David Pfaelzer et al.

Certificate of the Attorney General.

Order transferring cause to Commerce Court.

Order granting leave to Pfaelzer et al. to amend answer.

Second amendment of joint answer of Pfaelzer et al.

Secondly amended joint and several answer of Pfaelzer et al.

Appearance of Louis Pfaelzer & Sons, a corporation, and order that answer of Pfaelzer et al. stand as answer of the corporation.

Opinion of Commerce Court.

Petition for reargument and order setting cause for reargument.

Opinion on reargument.

Final decree.

Petition for appeal by United States, assignment of errors and order allowing appeal.

Petition for appeal by Chicago Junction Railway Company, assignment of errors and order allowing appeal.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General,
For the United States.

RALPH M. SHAW,
Solicitor for C. J. Ry. Co.; U. S. Y. & T. Co.;
and C. J. Ry. and U. S. Y. Co.

WILLARD M. MCEWEN,
Solicitor for Pfaelzer et al. and Louis
Pfaelzer & Sons, a Corporation.

225 United States Commerce Court.

THE UNITED STATES OF AMERICA, UPON THE application of the Attorney General, at the request of the Interstate Commerce Commission, petitioners,

vs.

UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; and David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, respondents.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 224, inclusive) to be a true and complete transcript of the proceedings had of record in the above entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 8th day of April, A. D. 1912.

[SEAL.] G. F. SNYDER,
Clerk.

226 *Citation on appeal.*

UNITED STATES OF AMERICA, *ss:*

To Union Stock Yard and Transit Company of Chicago, a corporation; The Chicago Junction Railway Company, a corporation; The Chicago Junction Railways and Union Stock Yards Company, a corporation; David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer and Sons; and Louis Pfaelzer and Sons, a corporation, successor to said copartnership:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, is

appellant and you are appellees, to show cause, if any there be, why the final order or decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 9th day of March, 1912.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 19th day of March, 1912.

RALPH M. SHAW,
Solicitor for Union Stock Yard and Transit Company of Chicago, The Chicago Junction Railway Company, and The Chicago Junction Railways and Union Stock Yards Company.

WILLARD M. MCEWEN,
Solicitor for David Pfaelzer, Abe Pfaelzer, and Jonas L. Pfaelzer, a copartnership doing business under the firm name and style of Louis Pfaelzer & Sons, and Louis Pfaelzer & Sons, a corporation.

227 In the United States Commerce Court.

(Stamped:) Filed Mar. 12, 1912. United States Commerce Court. G. F. Snyder, Clerk.

THE UNITED STATES OF AMERICA, UPON THE APPLICATION of the Attorney General, at the request of the Interstate Commerce Commission,
v.
THE UNION STOCK YARD AND TRANSIT COMPANY OF Chicago, a corporation, et al. } No. 15.

Citation.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court wherein the Chicago Junction Railway Company is appellant, and the United States, upon the relation of the Attorney General, at the request of the Interstate Commerce Commission, is appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to parties in that behalf.

Witness, the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 9th day of March, A. D. 1912.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

228 Service of a copy of the within citation is hereby admitted this 11th day of March, A. D. 1912.

WINFRED T. DENISON,
Acting Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

229 (Indorsed:) No. ——. In the United States Commerce Court. The United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, v. The Union Stock Yard and Transit Company of Chicago, a corporation, et al. Citation.

(Indorsement on cover:) File No. 23173. United States Commerce Court. Term No., 621. The United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission, appellant, vs. Union Stock Yard and Transit Company of Chicago et al. File No. 23174. Term No., 622. The Chicago Junction Railway Company, appellant, vs. The United States of America, upon the application of the Attorney General, at the request of the Interstate Commerce Commission. Filed April 22d, 1912. File Nos., 23173 and 23174.

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